United Nations A/73/396

General Assembly

Distr.: General
26 September 2018

Original: English

Seventy-third session
Agenda item 74 (b)
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Extreme poverty and human rights*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, submitted in accordance with Human Rights Council resolution 35/19.

* The present report was submitted after the deadline in order to reflect the most recent developments.

18-15972 (E) 081018

Please recycle

Report of the Special Rapporteur on extreme poverty and human rights

Summary

Privatization is generally presented as a technical solution for managing resources and reducing fiscal deficits, but in fact, it is an integral part of an economic and social philosophy of governance. Key international actors now promote it aggressively without regard to its human rights implications or consequences, while most human rights bodies have either ignored the phenomenon or assumed that tweaking existing procedures provides an adequate response. Yet privatization often involves the systematic elimination of human rights protections and further marginalization of the interests of low-income earners and those living in poverty. Existing human rights accountability mechanisms are clearly inadequate for dealing with the challenges presented by large-scale and widespread privatization. Human rights proponents need to fundamentally reconsider their approach.

Contents

		Page
I.	Introduction	4
II.	Defining privatization	5
III.	The past and future of privatization	6
	A. The past	6
	B. The future	7
IV.	Justifications versus outcomes	10
V.	Human rights impacts	12
VI.	The human rights community and privatization	14
	A. Treaty bodies	14
	B. Special procedures	15
	C. Scholars	15
	D. Civil society	16
VII.	The principal mitigation techniques and their inadequacies	17
	A. Characterizing certain activities as inherently public	17
	B. Assimilating the private actor into the State	18
	C. Detailed regulation	18
	D. In-depth monitoring	18
	E. Guidelines and more guidelines	19
	F. Pro-poor interventions	20
	G. Ensuring broad participation in decision-making	20
VIII.	Rethinking the human rights implications of privatization	21
	A. Acknowledge past inadequacies	21
	B. Reassert basic values	21
	C. Relegitimize taxation	22
	D. Reclaim the moral high ground	22
	E. Reset the default	22
	F. Ensure the centrality of human rights in the privatization framework	23
	G. Reimagine human rights accountability	23
	H. Reform public sector accountability	23
IX.	Conclusions and recommendations	23

I. Introduction[1]

1. Privatization is a process through which the private sector becomes increasingly, or entirely, responsible for activities traditionally performed by government, including many explicitly designed to ensure the realization of human rights. It can take many forms, ranging from the complete divestiture of government assets and responsibilities to arrangements such as public-private partnerships. By way of illustration, the latter might involve a medium- or long-term contractual arrangement, perhaps based on a concession or a lease, between a government and a private company. The company might build and/or run projects or services such as hospitals, schools, water, sanitation, prisons, roads, energy utilities or railways. Although the Government underwrites the project, risk is shared. In the health sector, privatization might involve multi-stakeholder partnerships, public-private initiatives or collaborations, private finance initiatives or demand-side financing.[2] In education, private schools might replace some or all government schools, or the Government might contract out certain functions, encourage charter schools, provide vouchers or import private sector techniques into the public sector.[3]

2. Since the 1970s, several waves of privatization have swept the world. In 2017, the Privatization Barometer concluded that "the massive global privatization wave that began in 2012 continues unabated".[4] That wave has been driven not only by Governments and the private sector, but also by international organizations, especially the International Monetary Fund (IMF), the World Bank and the United Nations. While some proponents present privatization as just "a financing tool",[5] others promote it as being more efficient, flexible, innovative and effective than public sector alternatives. In practice, however, privatization has also metamorphosed into an ideology of governance. As one advocate put it, "anything that strengthens the private sector [against] the State is protective of personal freedom".[6] Freedom is thereby redefined as an emaciated public sector alongside a private sector dedicated to profiting from running key parts of the criminal justice system and prisons, determining educational priorities and approaches, deciding who will receive health interventions and social protection, and choosing what infrastructure will be built, where and for whom.

3. This redefinition of the public good in terms of freedom from government, combined with the "liberation" provided by corporate efficiency and profitability, raises fundamental questions from a human rights perspective. Are private entities dedicated to maximizing their own profits best placed to protect the rights of the community? Is it possible to privatize vital services in such a way as to ensure that the most vulnerable are not further disadvantaged? If extensive conditions are required for that purpose, does that not undermine much of the rationale for privatization? How could corporations ensure the rights of the least well-off without

---

[1] The Special Rapporteur is grateful to Anna Bulman for her excellent research for the present report.

[2] See Sonia Languille, "Public-private partnerships in education and health in the global South: a literature review", *Journal of International and Comparative Social Policy*, vol. 33, No. 2 (2017), p. 144.

[3] See Antoni Verger, Clara Fontdevila and Adrián Zancajo, "Multiple paths towards education privatization in a globalizing world: a cultural political economy review", *Journal of Education Policy*, vol. 32, No. 6 (2017), p. 757.

[4] See Privatization Barometer, *The PB Report 2015/2016* (2017), p. 4. Available at https://assets.kpmg.com/content/dam/kpmg/it/pdf/2017/01/ThePBReport2015-2016.pdf.

[5] See draft guiding principles on people-first public-private partnerships for the United Nations Sustainable Development Goals (ECE/CECI/WP/PPP/2017/CRP.1), p. 4.

[6] See Mitchel E. Daniels, "Reforming government through competition", in Reason Foundation, *Transforming Government through Privatization* (Los Angeles, California, 2006), p. 10.

undermining their own profitability? How can underfunded public entities effectively monitor the performance of diverse private companies even to ensure non-discrimination, let alone overall respect for human rights? What meaningful role can participation and accountability play when private corporations, operating on commercial principles, are taking key decisions affecting public welfare and individual rights? And how can international human rights accountability mechanisms play any significant role when privatization takes place within frameworks that exclude human rights considerations and when the private entities insist that they have no human rights obligations?

4. While responsibility for privatization lies primarily with Governments and the private sector, the main focus of the present report is on how the human rights community has responded to the large-scale transfer of power from the public to the private sector. To date, international and domestic human rights bodies have certainly criticized particular forms or examples of privatization, such as in the criminal justice sector, but overall they have chosen the path of agnosticism and assumed that tinkering with existing procedural safeguards will suffice to ensure favourable human rights outcomes. Most have thus failed to acknowledge or engage with the far-reaching implications of the view, expressed by the World Bank almost 30 years ago, that "there are virtually no limits on what can be privatized".[7] While the present report is especially concerned with the impact of privatization on the human rights of low-income persons and those living in poverty, that dimension can be meaningfully understood only in the broader context of the shift in values that privatization has brought about.

II. Defining privatization

5. Most definitions of privatization are of limited utility, because they fail to capture the deeper processes of value transformation that are at play. Narrowly conceived, privatization involves full divestiture, through which "all or substantially all the interests of a Government in a utility asset or a sector are transferred to the private sector", even if some form of governmental regulation or oversight is maintained.[8] More broadly, the term can cover any private sector involvement in public service provision.[9] The most expansive of definitions include not only tangible private involvement along a spectrum of contractual arrangements, but also organizational or ideological transformations of the public sector.[10] The private sector can become involved in or displace the public sector in various ways, including through ownership, financing, management, and service and/or product delivery.[11] Such involvement may be achieved through public-private partnerships,

[7] See Mary M. Shirley, "The what, why and how of privatization: a World Bank perspective", *Fordham Law Review*, vol. 60, No. 6 (1992), p. S24.

[8] See https://ppp.worldbank.org/public-private-partnership/agreements/full-divestiture-privatization; see also Organization for Economic Cooperation and Development (OECD), "Privatization in the 21st century: recent experiences of OECD countries — report on good practices" (2009).

[9] See Kate Bayliss and Elisa Van Waeyenberge, "Unpacking the public-private partnership revival", *Journal of Development Studies*, vol. 54, No. 4 (2018), p. 578.

[10] See Julien Mercille and Enda Murphy, "What is privatization? A political economy framework", *Environment and Planning A: Economy and Space*, vol. 49, No. 5 (May 2017), p. 1045.

[11] Ibid., p. 1041.

corporatization, [12] outsourcing, [13] divestiture or asset transfers. [14] Other terms sometimes used include "commercialization", "commodification" and "private sector participation". For the purposes of the present report, the Special Rapporteur uses the term in a broad generic sense.

III. The past and future of privatization

A. The past

6. Large-scale privatization was first championed by General Augusto Pinochet, President of Chile, in the early 1970s and then taken up by Margaret Thatcher, Prime Minister of the United Kingdom of Great Britain and Northern Ireland, after her election in 1979.[15] In the United Kingdom, the first national industries to be sold were in competitive markets, such as aerospace, road freight and storage, shipbuilding, oil, and council housing. By the mid-1980s, "natural monopolies", or public utilities such as rail, water, sewerage, electricity, gas and telecommunications, were sold. And in 1992, the private finance initiative was introduced as a means by which to rely on private investment to deliver a wide range of public sector services and infrastructure, in accordance with government specifications.

7. Internationally, privatization was promoted as an antidote to patronage through public sector employment and to reduce the size of government. It became a central feature of the programmes promoted in the post-communist States of Eastern Europe and, under the auspices of the Washington Consensus, spread to Africa, Latin America and Asia. Development finance and structural adjustment support were made conditional upon the transfer of ownership of "burdensome and inefficient public enterprises" to private companies. [16] Public utilities, especially in water and sanitation, were the subject of large-scale privatization.[17]

8. By the early 2000s, as the pitfalls of structural adjustment became more apparent, proponents of privatization talked less of downsizing the State and more about correcting market failures, creating markets and enabling the private sector to thrive. Public-private partnerships also emerged, especially in the infrastructure context, as a favoured mechanism.

---

[12] Ibid., pp. 1046–1047 (corporatization is "the process whereby private or private-law-based organizations — such as State-owned companies or foundations — are established by a Government. They carry out functions that were previously managed in-house by the Government").

[13] Ibid., p. 1048 (outsourcing involves "the transfer of public services or goods provision to the private sector. Financing remains public and contracts are of shorter duration than in the case of public-private partnerships").

[14] Divestiture might involve selling to domestic or foreign firms or to managers or workers, an initial public offering in capital markets, or free distribution of shares to the population (mass privatization). See Saul Estrin and Adeline Pelletier, "Privatization in developing countries: what are the lessons of experience?" (2015), pp. 3 and 45.

[15] See David Parker, *The Official History of Privatization, vol. I: The Formative Years 1970–1987* (Abingdon, United Kingdom of Great Britain and Northern Ireland, Routledge, 2009); ibid., *vol. 2: Popular Capitalism, 1987–1997* (Abingdon, Routledge, 2012).

[16] See Sarah Babb, "The Washington Consensus as transnational policy paradigm", *Review of International Political Economy*, vol. 20, No. 2 (2013), p. 275.

[17] See Susan Spronk, "Water and sanitation utilities in the global south: re-centring the debate on 'efficiency'", *Review of Radical Political Economics*, vol. 42, No. 2 (2010), p. 156.

9. Another wave followed the global financial crash of 2007/8 and the resulting push for austerity and budget reductions.[18] Privatization generated funds for cash-strapped Governments, reduced liabilities, allowed major projects to be pursued "off-budget" without being reflected in government spending, and provided an occasion to push public sector reforms.[19]

10. The current wave of privatization emphasizes the concept of "blended finance", defined as "the use of development capital (from public sources like government aid or development banks, or philanthropic sources like foundations) to de-risk Sustainable Development Goal-related investments ... in order to attract commercial capital from private investors who would otherwise not have participated".[20] Whereas public-private partnerships are project-based and define the contractual relationship between the parties involved, "blended finance" refers to the sources of finance.[21] The role of the Government is in part to "provide a significant risk cushion".[22] In other words, corporations take the profits, but Governments will bear much of the losses if they are significant.

11. Assessing the extent to which privatization has occurred in global terms is difficult, if not impossible, given the wide variation among countries and sectors, and over time. Nonetheless, the World Bank's Private Participation in Infrastructure Database tracks projects in 139 low- and middle-income countries in the energy (electricity and gas), transport (airports, railways and roads), telecommunications, and water and sewerage sectors.[23] It currently lists 7,023 projects (management or lease contracts, concessions, greenfield projects and divestitures) representing $1,758 billion in total investment.[24] In the European Union, 1,749 public-private partnerships, worth some €336 billion, have been transacted since the 1990s, primarily in transport, health care and education.[25]

B. The future

12. There is a real risk that the waves of privatization experienced to date will soon be followed by a veritable tsunami. Some observers suggest that privatization, at least in some industries and sectors, is slowing down in the face of "remunicipalization".[26] In reviewing water policies at the global level, one author describes "the rise and part fall of privatization" and sees "a slow global turn to remunicipalization". Another

[18] See Isaac Christiansen, "Commodification of health care and its consequences", *World Review of Political Economy*, vol. 8, No. 1 (spring 2017), p. 87; and Daniel Edmiston, "Social security privatization in the UK: a means to whose end?", *People, Place and Policy*, vol. 8, No. 2 (2014), p. 114.

[19] See Nancy Alexander, "Globalization and the State's sovereign right to regulate in the public interest: the case of public-private partnerships (PPPs) in infrastructure", Heinrich Böll Stiftung, North America, 15 May 2017. Available at http://us.boell.org/2017/05/15/globalization-and-states-sovereign-right-regulate-public-interest-case-public-private.

[20] See Blended Finance Task Force, *Better Finance, Better World: Consultation Paper of the Blended Finance Task Force* (London, 2018), p. 10; see also OECD, "OECD DAC blended finance principles for unlocking commercial finance for the Sustainable Development Goals", January 2018.

[21] See Javier Pereira, "Blended finance: what it is, how it works and how it is used" (Oxford, United Kingdom, Oxfam, 2017).

[22] See Blended Finance Task Force, *Better Finance, Better World*, p. 9.

[23] See https://ppi.worldbank.org/data.

[24] See World Bank, PPI visualization dashboard, Private Participation in Infrastructure database, available at https://bit.ly/2tzrzpF.

[25] See European Court of Auditors, *Public-Private Partnerships in the EU: Widespread Shortcomings and Limited Benefits* (Luxembourg, Publications Office of the European Union, 2018), p. 9.

[26] This involves the return of previously privatized services to delivery by the public sector.

study documented 235 cases of water remunicipalization in 37 countries between 2000 and 2015.[27] A later study of essential services such as energy, waste collection, transport, education, health and social services found 835 examples of remunicipalization, involving more than 1,600 cities in 45 countries.[28] Other commentators have also been encouraged by the renationalization of pension schemes in some countries.[29]

13. But any sense that privatization is now generally on the defensive is belied by the statistics and the programmes of the key international actors, which are surveyed below.

1. The United Nations

14. While the Sustainable Development Goals reflect a compromise between competing conceptions of the State as either a provider or a mere private sector facilitator,[30] subsequent developments have seen a significant emphasis on public-private partnerships, as illustrated in the private financing emphasis of the 2015 Addis Ababa Action Agenda of the Third International Conference on Financing for Development (see General Assembly resolution 69/313, annex, paras. 5, 13, 14 and 17, inter alia).

15. The role of the United Nations in relation to privatization has been mixed. Some stakeholders have been highly critical,[31] but in its flagship report on global social policy, the United Nations does not even refer to the effects or implications of privatization.[32] In a recent Economic and Social Council report, it was noted that expertise on public-private partnerships within the United Nations was "relatively limited and rather scattered" (see ECE/CECI/WP/PPP/2017/CRP.1, p. 4). Within the Organization, the United Nations Conference on Trade and Development has been highly sceptical of privatization,[33] while the Economic Commission for Europe (ECE) has emerged as the leading proponent of public-private partnerships. In response to criticisms that the traditional public-private partnership model is unsuitable for promoting the Sustainable Development Goals and that it privatizes reward while socializing cost, ECE has called for an adapted and revised model of "people-first public-private partnerships", in the hope that these will eventually be supported by the whole United Nations system (see ECE/CECI/WP/PPP/2017/CRP.1, pp. 4 and 10). This model emphasizes poverty eradication, more equitable income allocation

---

[27] See Satoko Kishimoto, Emanuele Lobina and Olivier Petitjean, eds., *Our Public Water Future: The Global Experience with Remunicipalization* (Amsterdam and others, Transnational Institute and others, 2015) p. 7. Available at www.tni.org/files/download/ourpublicwaterfuture-1.pdf.

[28] See Satoko Kishimoto and Olivier Petitjean, eds., *Reclaiming Public Services: How Cities and Citizens are Turning Back Privatization* (Amsterdam and Paris, Transnational Institute and others, 2017), p. 11. Available at www.tni.org/files/publication-downloads/reclaiming_public_services.pdf.

[29] See Carmelo Mesa Lago, *Reversing Pension Privatization: The Experience of Argentina, Bolivia, Chile and Hungary*, Extension of Social Security Working Paper, No. 44 (Geneva, International Labour Office, 2014). Available at www.social-protection.org/gimi/gess/RessourcePDF.action?ressource.ressourceId=53192.

[30] See Jens Martens, "Reclaiming the public (policy) space for the SDGs: privatization, partnerships, corporate capture and the implementation of the 2030 Agenda", in Barbara Adams and others, eds., *Spotlight on Sustainable Development 2017: Reclaiming Policies for the Public* (Rheinbreitbach, Germany, Medienhaus Plump, 2017), p. 11.

[31] See United Nations, Department of Economic and Social Affairs, "Blended finance in the SDG era", technical workshop on the margins of the 5th biennial high-level meeting of the Development Cooperation Forum, New York, 20 July 2016.

[32] *Promoting Inclusion through Social Protection: Report on the World Social Situation 2018* (United Nations publication, Sales No. E.17.IV.2).

[33] See *Trade and Development Report 2017: Beyond Austerity — Towards a Global New Deal* (United Nations publication, Sales No. E.17.II.D.5).

and meaningful dialogue with stakeholders.[34] When ECE addresses human rights, it is generally in relation to the non-binding Guiding Principles on Business and Human Rights or to underscore that respect for property rights is essential.

2. Business

16. While no group speaks for the private sector as a whole, the Business and Sustainable Development Commission brings together many of the titans of global business and has taken a leadership role in promoting privatization. In a major report designed to push back against "unaccountable globalization" and perceptions that big business and major financial institutions are "detached and rootless", the Commission focuses on the Sustainable Development Goals as a business opportunity, arguing that they "offer a compelling growth strategy for individual businesses, for business generally and for the world economy" and will not be achieved without business.[35] The Commission states that "poverty, inequality and lack of financial access [should be turned] into new market opportunities for smart, progressive, profit-oriented companies", although it avoids using the word "privatization".[36] It does, however, make many references to rights, usually in relation to the Guiding Principles. It even calls for a "social contract" to achieve "the global goals that meet basic needs and protect human rights (the social goals)", although no definition of "social goals" is offered.[37]

17. A second report, by the Commission's Blended Finance Task Force, presents blended finance as the key to achieving the Sustainable Development Goals. The argument, echoed by ECE, the Organization for Economic Cooperation and Development (OECD) and the World Bank, is that there is an "investment gap" of between $2 trillion and $3 trillion a year that can best be filled by blended finance initiatives in order to meet Sustainable Development Goal targets. Since least developed countries currently receive only 7 per cent of the total of such initiatives, the Task Force seeks a dramatic increase. It thus calls upon: institutional investors "to support Sustainable Development Goal investments in line with their fiduciary duty"; philanthropic foundations to use their resources to support blending; developed countries to use their official development assistance for this purpose; multilateral development banks and development finance institutions to greatly increase their collaboration with the private sector; and developing countries to "prioritize strong enabling environments ... for infrastructure investment".[38] The report notes that, in an industry survey, 70 per cent of institutional investors reported historical profit margins of between 12 per cent and 17 per cent on infrastructure investments.[39] On top of that, blended finance further reduces private sector risk through the mobilization of intergovernmental and governmental finance and guarantees.

3. The International Monetary Fund

18. Privatization has long been a key part of the agenda of IMF.[40] Although the Fund claims to have introduced major changes to some of its Washington Consensus-era policies, the emphasis on the privatization of a range of public sector enterprises and

[34] See "Implementing the United Nations 2030 Agenda for Sustainable Development through effective, people-first public-private partnerships" (ECE/CECI/WP/PPP/2017/CRP.9), p. 3.

[35] See Business and Sustainable Development Commission, *Better Business, Better World* (London, 2017), p. 11.

[36] Ibid., p. 7.

[37] Ibid., p. 82.

[38] See Blended Finance Task Force, *Better Finance, Better World*, p. 92.

[39] Ibid., p. 9.

[40] See Jonathan D. Ostry, Praksh Loungani and Davide Furceri, "Neoliberalism: oversold?", *Finance and Development*, vol. 53, No. 2 (June 2016), p. 38.

activities continues to feature prominently in the advice given to Governments and in the conditions attached to its loans.

19. A review of the 10 most recent article IV staff reports dealing with countries in Africa shows that IMF was actively advocating privatization in six cases, while in virtually all of the others the Governments themselves noted their commitment to public-private partnerships and related projects.[41]

4. The World Bank

20. In 2015, the World Bank promoted the concept of increasing private sector financing "from billions to trillions" to meet the Sustainable Development Goals.[42] In 2017, it announced its "Maximizing Finance for Development" agenda, which "prioritizes private financing and sustainable private sector solutions" to achieve the Sustainable Development Goals by 2030.[43] Using a "cascade approach", the Bank seeks to "crowd the private sector in" and to "reserve scarce public financing for those areas where private sector engagement is not optimal or available". In effect, profitable enterprises will be reserved to the private sector, while unprofitable activities will be publicly financed.[44] The voluminous materials promoting this entirely one-sided solution to development financing make no mention of the human rights implications of the resulting public/private division of labour, and the implications for those living in poverty are given short shrift.

5. The Group of 20

21. The Group of 20 has also promoted a range of strategies designed to dramatically increase private sector involvement in development finance.[45]

IV. Justifications versus outcomes

22. Privatization has been supported on many and varied grounds. Proponents portray the private sector as being more efficient, more capable of mobilizing finance, more innovative, able to relieve the Government of much of the risk and to negotiate cheaper and more predictable construction costs, and better able to capitalize on economies of scale and minimize running costs. They claim that, as a result, it can generate strong profits, ensure better quality, provide enhanced maintenance, be more flexible and avoid the rigidities and inefficiencies of government-type bureaucracy. Ostensibly, the benefits outweigh the higher financial cost of private (as opposed to public) sector financing.

23. There is, however, a striking disconnect between this idealized narrative and the findings contained in many of the theoretical and empirical studies on the subject. In terms of theory, economists such as Joseph Stiglitz have argued that the "case for

---

[41] As at 10 July 2018, the first group consisted of Algeria, Angola, Côte d'Ivoire, Mali, Mozambique and Nigeria. The second group consisted of the Comoros, the Gambia, Liberia and Malawi.

[42] See World Bank and others, "From billions to trillions: transforming development finance — post-2015 financing for development: multilateral development finance", 2 April 2015. Available at http://siteresources.worldbank.org/DEVCOMMINT/Documentation/23659446/DC2015-0002(E)FinancingforDevelopment.pdf.

[43] See http://ieg.worldbankgroup.org/blog/creating-markets-are-ppps-answer.

[44] See World Bank, "Maximizing finance for development: leveraging the private sector for growth and sustainable development", 19 September 2017, p. 1. See, generally, Tito Cordella, "Optimizing finance for development", Policy Research Working Paper, No. 8320 (Washington, D.C., World Bank, 2018).

[45] See Nancy Alexander, "The hijacking of global financial governance?", Heinrich Böll Stiftung, North America, 23 April 2018. Available at https://us.boell.org/2018/04/23/hijacking-global-financial-governance.

privatization is, at best, weak or non-existent",[46] and many empirical studies have also generated critical results.[47]

24. A brief report to the General Assembly is not the place to provide a thorough survey of the many studies of privatization outcomes, let alone to seek to resolve the debates surrounding them. It is, however, important to make the point that the arguments that are systematically invoked to justify privatization are often challenged or contradicted by the available evidence. For the purposes of the present report, it must suffice to take note of the results of two very recent detailed official studies. While both are focused on industrialized countries, the challenges are even greater in "poor and fragile countries".[48]

25. The first study, conducted by the National Audit Office of the United Kingdom, concluded that the private finance initiative model had proved to be more expensive and less efficient in providing hospitals, schools and other public infrastructure than public financing.[49] The second study, conducted by the European Court of Auditors of the European Union, examined 12 public-private partnerships in France, Greece, Ireland and Spain, in road transport and information and communications technology. It concluded that the partnerships were characterized by "widespread shortcomings and limited benefits".[50]

26. In terms of costs, private finance is more expensive than public finance, and public-private partnerships can also incur high design, management and transactional costs due to their complexity and the need for external advice.[51] In addition, negotiations on issues other than traditional procurement can cause project delays of some years.[52] The European Union study found "considerable inefficiencies in the form of delays during construction and major cost increases".[53]

27. Similar findings emerged from a review of public-private partnerships in health and education in Africa, Asia and Latin America that pointed to high public costs, and onerous ongoing administrative burdens for the public sector.[54] The United Kingdom study warned of private entities charging high prices to cover unforeseen costs, and of escalating prices as negotiations dragged on, leading to "significant capital cost increases compared to initial estimates."[55] There is also a problematic pattern of contractors bidding low initially and then increasing tariffs through contract

[46] See Joseph E. Stiglitz, Foreword, in Gérard Roland, ed., *Privatization: Successes and Failures* (New York, Columbia University Press, 2008), p. xii.

[47] See Bernardo Bortolotti and Valentina Milella, "Privatization in Western Europe: stylized facts, outcomes and open issues", in Roland, *Privatization*, p. 32; David Parker and David Saal, eds., *International Handbook on Privatization* (Edward Elgar Publishing, 2003), p. 3; and Malcolm Langford, "Privatization and the right to water", in Malcolm Langford and Anna F. S. Russell, eds., *The Human Right to Water: Theory, Practice and Prospects* (Cambridge, United Kingdom, Cambridge University Press, 2017), p. 502.

[48] See David Pilling, "World Bank set for Uganda dam refinancing talks despite criticism", *Financial Times*, 7 March 2018.

[49] See United Kingdom, National Audit Office, *PFI and PF2*, report by the Comptroller and Auditor General (London, 2018).

[50] See European Court of Auditors, *Public-Private Partnerships in the EU*.

[51] See Languille, "Public-private partnerships in education and health in the global South", p. 156; and Germà Bel and Xavier Fageda, "What have we learned from the last three decades of empirical studies on factors driving local privatization?", *Local Government Studies*, vol. 43, No. 4 (2017), pp. 503–511.

[52] See European Court of Auditors, *Public-Private Partnerships in the EU*, p. 9.

[53] Ibid., p. 10.

[54] See Languille, "Public-private partnerships in education and health in the global South", p. 156.

[55] See United Kingdom, National Audit Office, *PFI and PF2*, p. 9.

renegotiation.[56] This is consistent with the European Union finding of "over-optimistic scenarios regarding future demand and use of the planned infrastructure".[57]

28. In terms of efficiency, the United Kingdom study found "no evidence of operational efficiency" in private finance initiative hospitals and concluded that "the cost of services, like cleaning, in London hospitals is higher under private finance initiative contracts".[58] The Department of Education of the United Kingdom reported that private project financing costs were 40 per cent higher than the costs of government borrowing, while a Treasury Committee analysis estimated the costs of a privately financed hospital to be 70 per cent higher than those of a public sector hospital.[59]

29. The privatization of public projects and services often yields significant short-term cost savings, but at the expense of imposing major burdens on future generations. Removing the relevant costs from the Government's balance sheet undermines both "value for money and transparency"[60] and has been criticized as a "fiscal illusion".[61]

30. The European Union and United Kingdom studies also raise other concerns that warrant brief mention here: (a) conflicts between public concerns over the quality of life and the private sector's preoccupation with profitability;[62] (b) the difficulty of avoiding windfall returns to the private sector, while compensating for unanticipated losses through renegotiations;[63] (c) private sector entities structured to minimize or avoid taxes on profits;[64] (d) a lack of competition in privatized project design and selection;[65] (e) the risk of private monopolies; (f) the misallocation of risk between parties and excessive remuneration rates to private companies;[66] and (g) inflexible long-term contracts that can leave Governments with expensive "white elephants".[67]

V. Human rights impacts

31. Privatization arrangements are rarely conducive to human rights impact assessments. First, human rights criteria are systematically absent from almost all such agreements. Second, sustained monitoring is rarely undertaken on issues such as the impact on the poor, access to services and service quality.[68]

32. But available reports attest to innumerable ways in which those living in poverty or on low incomes can be negatively affected by privatization. For the purposes of the present report, a few examples must suffice.

33. As aspects of criminal justice systems are privatized, many different charges and penalties are levied with far greater impact on the poor, who then must borrow to pay them or face default. The quality of the services that they can afford diminishes, and their prospects of obtaining justice recede even further (see A/HRC/38/33/Add.1).

---

[56] See J. Luis Guasch, *Granting and Renegotiating Infrastructure Concessions: Doing It Right*, WBI Development Studies, No. 28816 (Washington, D.C., World Bank 2004), p. 81.
[57] See European Court of Auditors, *Public-Private Partnerships in the EU*, p. 10.
[58] See United Kingdom, National Audit Office, *PF1 and PF2*, para. 1.9.
[59] Ibid., para. 1.19.
[60] See European Court of Auditors, *Public-Private Partnerships in the EU*, p. 11.
[61] See United Kingdom, National Audit Office, *PF1 and PF2*, para. 1.16.
[62] See Edmiston, "Social security privatization in the UK", p. 119.
[63] See United Kingdom, House of Commons, Committee of Public Accounts, "Private finance initiatives", June 2018, p. 5.
[64] Ibid., p. 6.
[65] See European Court of Auditors, *Public-Private Partnerships in the EU*, pp. 9–10.
[66] Ibid., p. 10.
[67] See United Kingdom, National Audit Office, *PF1 and PF2*, para. 1.21.
[68] See para. 82 below.

Prisoners are at the mercy of profit-seeking private operators, and corporations become highly influential in shaping public policies that reflect corporate interests rather than the public interest.

34. The privatization of social protection often results in the poor being "relegated to a new even more underfunded public sector".[69] The model of training social workers to recognize the inherent fragility of the human condition and identify the specific social, psychological, economic and even structural challenges faced by individuals is replaced by a model that is driven by economic efficiency concerns and is aimed at minimizing the time spent per client, closing cases earlier, maximizing outputs in formal but not human terms, generating fees wherever possible and thus catering especially to the better-off, and minimizing reporting and follow-up.[70]

35. Social security systems are increasingly being privatized, which is leading to service outsourcing, social insurance marketization, commercializing administrative discretion and paying by results.[71] These approaches empower private for-profit actors to make determinations about the needs and capacities of individuals, incentivize them to do so within a corporate rather than a public goods framework, and reward spending reductions rather than the achievement of positive human outcomes. The poor inevitably suffer as "preferential selection" approaches are used to prioritize clients with the most readily treatable problems and those who can afford to pay, while pushing those with serious or intractable problems to the margins. Such privatized care is also especially susceptible to racial and other forms of discrimination.

36. Infrastructure projects will be most attractive to private providers where significant user fees can be charged and construction costs are relatively low.[72] But the poor are badly placed to pay, cannot afford to use many services, and often live in distant or otherwise underserviced areas. Water, sanitation, electricity, roads, transport, education, health care, social services and financial services are far less likely to be provided adequately or at good quality levels to the poor. Instead, such persons either go without those services or pay even higher prices for substitute services. For example, as expensive toll roads proliferate, the poor make do with inferior, badly maintained and increasingly marginalized alternative options.

37. Many other examples could be cited. The response of privatization proponents to such concerns will generally be that pro-poor adjustments should have been more effectively built into the relevant policies or projects, and that enhanced monitoring and accountability mechanisms could have achieved more optimal outcomes. In other words, there is nothing inherently wrong with the process, but it could have been done better. The Special Rapporteur analyses those and other traditional solutions below.[73]

---

[69] See Shiri Noy, *Banking on Health: The World Bank and Health Sector Reform in Latin America* (Cham, Switzerland, Springer Nature, 2017), pp. 18–19.

[70] See Mimi Abramovitz and Jennifer Zelnick, "Privatization in the human services: implications for direct practice", *Clinical Social Work Journal*, vol. 43, No. 3 (September 2015), p. 283. Available at https://link.springer.com/content/pdf/10.1007%2Fs10615-015-0546-1.pdf.

[71] See Edmiston, "Social security privatization in the UK", p. 114; and Taner Akpınar and Servet Akyol, "Political economy of transforming social security policy in Turkey", *World Review of Political Economy*, vol. 9, No. 1 (spring 2018), p. 80.

[72] See Office of the United Nations High Commissioner for Human Rights and Heinrich Böll Foundation, *The Other Infrastructure Gap: Sustainability — Human Rights and Environmental Dimensions* (2018).

[73] See World Bank, *World Bank Group Support to Public-Private Partnerships: Lessons from Experience in Client Countries, FY02-12* (Washington, D.C., 2015), p. 100.

VI. The human rights community and privatization[74]

38. In a 2017 report of the Secretary-General and the United Nations High Commissioner for Human Rights, it was stated that privatization in key sectors "must not take place at the expense of equitable access to these services and the protection of human rights, and should be subject to human rights impact assessments" (see A/HRC/36/23, para. 55). But for the most part, the human rights community has engaged with privatization only in relation to certain specific issues, rather than in general. And United Nations human rights bodies, which tend to downplay or avoid the political economy dimensions of human rights, have also done that in relation to privatization, despite its major impact in many human rights contexts.

A. Treaty bodies

39. Scholars who have surveyed the work of treaty bodies have concluded that most have engaged in only a rather limited and not especially convincing way with the multiple issues raised by privatization.[75] The principal exceptions are the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights. The former has consistently acknowledged the relevance of privatization and has insisted that outsourcing or privatizing services for children does not exempt a State from its obligations under the Convention on the Rights of the Child.[76]

40. The general comments of the Committee on Economic, Social and Cultural Rights have regularly, although not consistently, addressed the role and responsibilities of private actors. A high point in this jurisprudence was the Committee's statement that where water services "are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable and physical access to sufficient, safe and acceptable water".[77] While some scholars have praised the diverse techniques used by the Committee to address privatization,[78] others have criticized it for not engaging with "privatization forms, processes, outputs, outcomes and rights impacts in depth in its general comments or other work" and have concluded that its concluding observations on the subject, with the exception of those on the right to education, have been "largely ad hoc".[79] The right to education is, nevertheless, a key battleground on this issue.[80]

41. In 2017, however, the Committee on Economic, Social and Cultural Rights adopted a general comment in which it addressed privatization in considerable detail. In essence, its position consists of the following elements: (a) "privatization is not per se prohibited by the International Covenant on Economic, Social and Cultural

[74] For a detailed survey of privatization and the practice of human rights monitoring mechanisms, see Antenor Hallo De Wolf, *Reconciling Privatization with Human Rights* (Intersentia, 2012), chap. V.

[75] See Aoife Nolan, "Privatization and economic and social rights", *Human Rights Quarterly*, vol. 4, No. 4 (forthcoming). Available at http://eprints.nottingham.ac.uk/50113/1/Nolan_Privatization%20%20ESR_HRQ_sharing.pdf; and De Wolf, *Reconciling Privatization with Human Rights*.

[76] See Committee on the Rights of the Child, general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, para. 25.

[77] See Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 24.

[78] See Langford and Russell, eds., *The Human Right to Water*, p. 473.

[79] See Nolan, "Privatization and economic and social rights", p. 15.

[80] See Global Initiative for Economic, Social and Cultural Rights, "Human rights bodies statements on private education, September 2014–November 2017", synthesis paper, ver. 9., November 2017. Available at http://globalinitiative-escr.org/wp-content/uploads/2016/10/GIESCR-CRC_CESCR_CEDAW-synthesis-statements-on-private-actors-in-education.pdf.

Rights"; (b) "in areas such as the provision of water or electricity, education or health care where the role of the public sector has traditionally been strong ... private providers should ... be subject to strict regulations that impose on them so-called 'public service obligations'"; (c) private sector provision might lead to less affordable and lower quality goods and services; (d) privatization should not result in the enjoyment of rights set out in the Covenant being "made conditional on the ability to pay"; and (e) since privatization "may result in a lack of accountability, measures should be adopted to ensure the right of individuals to participate in assessing the adequacy of the provision of such goods and services".[81]

B. Special procedures

42. Many special procedures mandate holders have touched on privatization. In relation to economic, social and cultural rights, the mandates relating to water and sanitation, housing, foreign debt, education and health have all expressed concerns. One of the stronger criticisms has concerned the exclusion of the disadvantaged from access to private schools, which "aggravates existing disparities in access to education, further marginalizing the poor" (see A/HRC/29/30, para. 43). Civil and political rights mandates have also raised explicit concerns, especially in the context of executions, torture, mercenaries and business. At the risk of overgeneralization, the main thrust has been to point to lower standards that have resulted from privatization in the security, health, policing, detention, intelligence and other sectors, to call upon the relevant Government to ensure that appropriate standards are maintained by private entities, and to insist that States' obligations are not affected by the act of privatizing the relevant activities.

C. Scholars

43. There is an extensive literature on privatization and its human rights implications. Most commentators accept the basic principle of privatization, draw attention to its shortcomings in practice and call for measures to regulate it more effectively.

44. In an important recent book, Manfred Nowak argues that privatization is contrary to international human rights law to the extent that it involves any deliberate regression in the level of services provided in relation to "core governmental functions", including "education, social security, water, personal liberty, security, dignity and integrity". Thus, for example, in the administration of justice, "far-reaching privatization ... will make it very difficult, if not impossible, for States" to respect human rights.

45. However, he also identifies a range of other sectors ("industry; banks; means of transport, including railways, airlines, ports and roads; means of communication, including postal and telecommunications services") in relation to which "privatization has led to more efficiency and has had no direct positive or negative impact on the enjoyment of human rights".[82] But this neat classification is problematic for several reasons. First, no convincing criteria are offered for the identification of the various sectors. Second, a blanket assessment of acceptable privatizations is made without looking at the specifics in any given context. Third, account is not taken of evidence

[81] See Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, paras. 21–22.

[82] See Manfred Nowak, *Human Rights or Global Capitalism: The Limits of Privatization* (Philadelphia, University of Pennsylvania, 2017), p. 3.

that privatization has brought about negative consequences, at least for low-income groups, in many of the sectors for which he approves of privatization. And fourth, the analysis stretches the concept of deliberate retrogression to its breaking point, rather than relying on the positive obligations assumed by States.

46. Another scholar, Aoife Nolan, focuses specifically on the impact of privatization on economic and social rights. She considers privatization to be permissible, provided it is properly implemented and achieves appropriate outcomes. She emphasizes the central and enduring obligations of the State "before, during and after privatization"[83] and criticizes various authors, especially the Committee on Economic, Social and Cultural Rights, for evaluating privatization primarily through the lens of the State's obligation to protect rather than the more broad-ranging obligation to fulfil the enjoyment of the relevant rights.[84]

D. Civil society

47. Privatization has long been a major concern of civil society, most recently in relation to the Sustainable Development Goals. In one report on that topic, it was concluded that "privatization and public-private partnerships involve disproportionate risks and costs for the public sector and can even exacerbate inequalities, decrease equitable access to essential services and jeopardize the fulfilment of human rights",[85] but the response of groups working on human rights has been very mixed. At the national level, this view has gained some prominence,[86] as illustrated by a detailed complaint submitted in 2018 to the Office of the Compliance Adviser/Ombudsman of the International Finance Corporation in relation to privatized education in Kenya.[87] Among the larger international non-governmental organizations, the International Federation for Human Rights has often raised the issue of privatization in country-level reporting, but the Federation makes no particular mention of it in its major publication on corporate accountability.[88] Human Rights Watch has been staunchly critical of its implications in particular areas, such as criminal justice, immigration detention and information technology, but has no overall policy on privatization. The Global Initiative for Economic, Social and Cultural Rights includes a wide-ranging project on privatization in education[89] and is involved in drafting standards on that subject.[90]

48. There have been several attempts to develop overall policy statements, including one by the International Network for Economic, Social and Cultural Rights focused on public-private partnerships[91] and another by Amnesty International, which has

---

[83] See Nolan, "Privatization and economic and social rights", p. 12.

[84] Ibid., pp. 18–20.

[85] See Adams and others, *Spotlight on Sustainable Development 2017*, p. 11.

[86] See, generally, www.business-humanrights.org/en/issues/other/privatisation.

[87] See Judith Oloo, Regional Director, East Africa Centre for Human Rights, "Submission of complaint concerning the Bridge International Academies", 16 April 2018. Available at http://eachrights.or.ke/wp-content/uploads/2018/04/CAO-Complaint-EACHRights-16-April-18-Public.pdf.

[88] International Federation for Human Rights, *Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms*, 3rd ed. (Paris, 2016).

[89] See http://globalinitiative-escr.org/advocacy/privatization-in-education-research-initiative/international-advocacy-on-privatisation-in-education/.

[90] See Global Initiative for Economic, Social and Cultural Rights, "Human rights guiding principles on the State obligations regarding private schools", draft 2018. Available at https://www.gi-escr.org/private-actors-social-services/education/human-rights-guiding-principles/.

[91] International Network for Economic, Social and Cultural Rights, "Privatization and public-private partnerships", briefing note, 2016. Available at www.escr-net.org/sites/default/files/1169911442/privatisation_briefing_note_english.pdf.

cautioned that privatization "can be a barrier to universal access if not properly regulated" and that a failure by the State to protect economic, social and cultural rights "can result in violations of rights ..., particularly for the poorest and most marginalized". It has criticized cost recovery approaches in housing and health, which "can have gendered and indirectly discriminatory consequences ... even if substantially subsidized".[92] While that analysis did not identify solutions, an earlier report had listed seven "human rights principles concerning delivery of essential services". They are: ensure that rights are protected; establish a clear and transparent regulatory framework; ensure that access to services is maintained; uphold the principle of non-discrimination; assess impact; ensure that the privatization process is open, fair and transparent; and ensure a safety net that requires privatized entities "to guarantee access to all, particularly the poor, marginalized, vulnerable and disadvantaged individuals and groups".[93]

49. At the risk of overgeneralization, the bottom line is that human rights groups as a whole have done little to tackle the broader systemic implications of privatization and have relied on reiterating doctrinal positions in the face of compelling evidence that such approaches are not working.

VII. The principal mitigation techniques and their inadequacies

50. The consistent response when the pitfalls of privatization are exposed is to propose techniques that will supposedly mitigate the negative consequences. The following analysis evaluates the principal techniques.

A. Characterizing certain activities as inherently public

51. Analysts commonly seek to identify services that are inherently public in nature and thus must always be guaranteed (whether or not provided) by the State. Even Adam Smith, an enthusiastic proponent of privatization, singled out certain activities that should remain the responsibility of the State, including the post office and national infrastructure, such as "good roads, bridges, navigable canals, harbours".[94] Although courts have occasionally characterized activities such as the operation of prisons as inherently governmental in nature,[95] the identification of criteria by which to separate inherently public activities from others that might be privatized has proved to be very elusive. Despite the appeal of the concept, the reality is that an almost limitless range of public functions has been entrusted to profit-making corporations in one jurisdiction or another, and human rights bodies have rarely condemned such transfers outright.

52. A milder form of this approach is to suggest that, as a rule or in principle, certain activities should be undertaken by the State.[96] But again, this technique has failed to significantly limit the reach of privatization in practice.

---

[92] Amnesty International, *Theory of Change Summaries 2016–2019* (2016), p. 19. Available at www.amnesty.org/download/Documents/POL1031652016ENGLISH.PDF.

[93] Amnesty International, "Human rights and privatization", 17 March 2005.

[94] See David A. Reisman, "Adam Smith on market and State", *Journal of Institutional and Theoretical Economics*, vol. 154, No. 2 (June 1998), p. 375.

[95] See High Court of Justice, Israel, *Academic Centre for Law and Business v. Minister of Finance*, Case No. 2605/05, 19 November 2009.

[96] In relation to privately run detention centres, see Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families, para. 39.

B. Assimilating the private actor into the State

53. Various commentators and United Nations human rights bodies have sought to circumvent the impact of privatization by asserting either that personnel working for private actors are nonetheless "acting in an official capacity"[97] and must thereby comply with State obligations, or that "States parties cannot absolve themselves of their human rights obligations by contracting out [specific functions] to private commercial enterprises".[98] But while these techniques enable the relevant monitors to avoid acknowledging that the reality has fundamentally changed as a result of privatization, they do little to constrain the preferences of States or uphold authentic human rights accountability.

C. Detailed regulation

54. The next technique is to insist that States must adopt detailed regulations governing privatized providers. Thus, for example, the Committee on Economic, Social and Cultural Rights urged that, in order to prevent private providers "from compromising equal, affordable and physical access to sufficient, safe and acceptable water ... an effective regulatory system must be established, in conformity with the Covenant".[99] Some scholars have gone even further, suggesting that "the more a State delegates its responsibilities to fulfil to a non-State actor, the greater its duty to protect".[100] In some sectors, such as water and prisons, such regulation has been attempted and has sometimes been effective.[101] But, for the most part, there is little evidence to suggest that privatization in most sectors and in most countries has been undertaken under conditions that resemble the sort of detailed obligations that human rights law would have imposed upon a governmental provider.

D. In-depth monitoring

55. Many human rights bodies and commentators insist that full-fledged monitoring of privatized providers must be put in place. The Committee on the Rights of the Child has called for "a permanent monitoring mechanism or process aimed at ensuring that all non-State service providers have in place and apply policies, programmes and procedures which are in compliance with the Convention".[102] The Committee on Economic, Social and Cultural Rights has called for "independent monitoring, genuine public participation and imposition of penalties for non-compliance".[103] And the Secretary-General has suggested that there is a need for human rights impact assessments of privatized providers (see A/HRC/36/23, para. 55). There is little indication, however, that human rights bodies have done much to ensure that such monitoring actually occurs, or to reprimand States when it does not.

---

[97] See Committee against Torture, general comment No. 2 (2007) on the implementation of article 2.

[98] See Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, general comment No. 2 (2013), para. 39.

[99] See Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 24.

[100] See Sharmila L. Murthy, "The human right(s) to water and sanitation: history, meaning and the controversy over privatization", *Berkeley Journal of International Law*, vol. 31, No. 1 (2013), p. 142.

[101] See Langford and Russell, eds., *The Human Right to Water*.

[102] Ibid.

[103] See Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002), para. 24.

E. Guidelines and more guidelines

56. Institutions and commentators consistently emphasize the importance of developing guidelines to ensure that public-private partnerships achieve the full range of desired objectives.[104] But in fact, truckloads of guidelines have already been adopted, and most ignore human rights in any comprehensive sense and pay scant regard to the negative outcomes that privatization can have in terms of poverty and inequality. A recent review of 12 sets of guidelines found that they focus mainly on transactional aspects, overlook gender concerns [105] and ignore other relevant environmental and social safeguard policies.[106]

57. While the 2008 guidelines of the Asian Development Bank guidelines include a chapter on pro-poor aspects, it is directed mainly at the donor community. A recent ECE initiative calls for the development of a model law on public-private partnerships that would "be responsive to gender" and would "allow for redress where rights of peoples are harmed by public-private partnerships" (see ECE/CECI/WP/PPP/2017/CRP.1, p. 19).

58. The highly influential World Bank Guidance on Public-Private Partnership Contractual Provisions contains several references to human rights, but only one is substantively significant in terms of encouraging private contractors to promote or even respect human rights. That is a footnote that justifies the importance of transparency and disclosure by referring to the right to freedom of information.[107] The Guidance does not even refer to the Guiding Principles on Business and Human Rights. It does, however, specify that the applicable law "should be limited to obligations with which the private partner must legally comply", including "international human rights or environmental treaties that are directly applicable in the respective jurisdiction or have been incorporated into its national law".[108] This appears to be formulated in such a way as to ensure that private providers would almost never have to comply with human rights, since such an obligation is almost never imposed by Governments. The Guidance also seems to require that human rights standards actually be specified in a contract if they are to be applicable.[109]

59. In an analysis carried out by a law firm, it was concluded that the Guidance emphasizes "the preferences and requirements of the private sector partner without commensurate consideration of the perspective of the Government" and "places disproportionate risk on Governments". The analysis also included the warning that inappropriate risk allocation can result in additional government debt or diversion of

---

[104] See Jomo KS and others, "Public-private partnerships and the 2030 Agenda for Sustainable Development: fit for purpose?", DESA working paper, No. 148 (New York, United Nations, Department of Economic and Social Affairs, 2016), p. 22. Available at www.un.org/esa/desa/papers/2016/wp148_2016.pdf.

[105] For an excellent survey, see the report of the Independent Expert on the effects of foreign debt (A/73/179).

[106] See Motoko Aizawa, "A scoping study of PPP guidelines", DESA working paper, No. 154 (New York, United Nations, Department of Economic and Social Affairs, 2018). The 12 guidelines were adopted by: Asian Development Bank (ADB) (2008); ADB, International Bank for Reconstruction and Development and Islamic Development Bank (2014); European Investment Bank (2011); European Commission (2003); International Monetary Fund (2006); OECD (2008); OECD (2012); Economic Commission for Europe (ECE) (2008); ECE (2016); Economic and Social Commission for Asia and the Pacific (2011); World Bank (2015); and World Bank (2016).

[107] See World Bank, *Guidance on PPP Contractual Provisions*, 2017 ed. (Washington, D.C., 2017), note 50.

[108] Ibid., para. 3.2.2.1.

[109] Ibid., note 32 ("If the parties agree the private partner should comply with institutional or industry standards or principles which are not legally binding, the PPP contract would typically specify the relevant version to be complied with ...").

resources from essential services to compensation which may be due even when a Government "changes the law as part of a bona fide, non-discriminatory effort to regulate environmental and social issues in the public's interest".[110]

F. Pro-poor interventions

60. Various solutions have been identified to mitigate risks to the poor, including "dialogue with partner Governments", "thorough poverty and social impact analysis", "provision of fair and affordable financial support for social safety nets", "tracer studies to monitor the long-term impact on affected workers", "tariff reform measures" and "direct subsidies or cross-subsidies to promote access by poorer groups within an affordable strategy".[111] The World Bank has an entire webpage devoted to such interventions.[112] Yet there remains remarkably little evidence that these recommendations been effectively implemented and maintained beyond the initial phase of securing approval.

61. The Economic and Social Commission for Asia and the Pacific (ESCAP) has a Pro-Poor Public-Private Partnership, but few details of any successes have been provided,[113] and the "people-first" public-private partnerships of ECE purportedly seek to "increase access of essential services to people, especially to the socially and economically vulnerable ... promote social justice and make essential services accessible without restriction on any ground".[114] This seems impossibly optimistic, given that few, if any, profit-seeking corporations see the provision of social justice and accessible essential services for all without any restriction to be their role or goal.

G. Ensuring broad participation in decision-making

62. Under the same ECE approach, it is insisted that public-private partnerships need to engage "all the stakeholders that are either directly involved ... or directly or indirectly affected".[115] Participation has long been a magic elixir for those seeking to ensure development outcomes that are consistent with respect for human rights. The Guiding Principles on Extreme Poverty and Human Rights go so far as to require States to "ensure the active, free, informed and meaningful participation of persons living in poverty at all stages of the design, implementation, monitoring and evaluation of decisions and policies affecting them" (see A/HRC/21/39, para. 38).

63. Whether or not this is realistic in public sector contexts, such participatory utopias could hardly be further from the reality experienced in the context of most privatization processes, in which decision-making effectively becomes the privilege of the private sector actor. Moreover, even in relation to those decisions that remain in public hands, the private sector is increasingly and unsurprisingly insistent upon being directly involved.

---

[110] See Foley Hoag, "Summary comments on the World Bank Group's 2017 *Guidance on PPP Contractual Provisions*", 15 September 2017. Available at https://us.boell.org/2017/09/15/summary-comments-world-bank-groups-2017-guidance-ppp-contractual-provisions-0.

[111] See Estrin and Pelletier, *Privatization in Developing Countries*, pp. 42–43.

[112] See https://ppp.worldbank.org/public-private-partnership/ppps-poor.

[113] See www.unescap.org/5P.

[114] See Specialist Centre on PPP in Smart and Sustainable Cities, "Draft proposal for an evaluation methodology for 'people-first' public-private partnerships", April 2018. Available at www.unece.org/fileadmin/DAM/ceci/documents/2018/PPP/Forum/Documents/Draft_Proposal_for_Evaluation_Methodology_for_People_First_PPPs.pdf.

[115] Ibid.

64. In other contexts, civil society is simultaneously being attacked and marginalized. Even in relation to the Sustainable Development Goals, with respect to which a great deal has been made of multi-stakeholder involvement, the reality is that civil society organizations are accorded an ever-diminishing role, while public-private partnerships consume much of the energy surrounding the process. Privatization is driving these developments. Civil society organizations are relevant primarily in contexts in which governmental actors can be persuaded, cajoled or embarrassed into promoting agendas designed to promote the public interest. But where privatization is systematically eroding governmental authority, and where power is instead being channelled to or through private actors, the relevance of civil society organizations diminishes and their funding evaporates.

VIII. Rethinking the human rights implications of privatization

65. New strategies are required, which should include the actions set out below.

A. Acknowledge past inadequacies

66. Few problems can be resolved without first being acknowledged. The patent inadequacies of existing responses to the dramatic spread of the privatization of formerly public goods and services must thus be recognized.

B. Reassert basic values

67. Procedural fixes have not worked precisely because privatization is a philosophy of governance rather than just a financing mechanism. A new strategy therefore needs to be focused first and foremost on basic values. Indeed, privatization's original proponents saw it as a question of values, albeit very different ones. Margaret Thatcher famously remarked that "there is no such thing as society ... There is no such thing as an entitlement, unless someone has first met an obligation".[116]

68. In response, the human rights community needs to reassert the centrality of concepts such as equality, society, the public interest and shared responsibilities. Although international law addresses primarily the rights of individuals, human rights are also clearly embedded within and inseparable from society and community. It is not accidental that the Universal Declaration of Human Rights: proclaims its relevance for "every organ of society"; calls for "society and the State" to protect the family; recognizes that everyone, as a member of society, has the right to social security; emphasizes everyone's "duties to the community"; and contemplates limitations on rights only insofar as they meet "the just requirements of morality, public order and the general welfare in a democratic society".

69. Whereas human rights law is premised upon the existence of a competent and benign State, privatization advocates assume the State to be incompetent and/or malign, while casting the private sector as efficient and socially responsible.

70. The human rights community needs to highlight the many reasons why government should be best placed to carry out community responsibilities. They include government's commitment to promoting substantive equality, its capacity to adopt rules that are rendered fair and equitable through processes of consultation and

[116] See Samuel Brittan, "Thatcher was right — there is no 'society'", *Financial Times*, 18 April 2013. Available at www.ft.com/content/d1387b70-a5d5-11e2-9b77-00144feabdc0.

feedback, its embrace of systems of checks and balances designed to avoid capture by any particular group, its eschewal of personal financial profit for administrators, and its answerability for alleged human rights abuses. Under a privatization regime, these considerations are, for the most part, replaced by the single measure of economic efficiency, a concept that cannot possibly capture the range of objectives that those entrusted with promoting the public good should seek to achieve.

C. Relegitimize taxation

71. Since the 1980s, neoliberals have undertaken highly successful efforts to delegitimize taxation. The rise of privatization has reinforced this thrust. As corporations become more politically powerful, they exert greater pressure for lower corporate tax rates, expanded tax concessions or exemptions, and wider loopholes to facilitate tax avoidance. These steps in turn ensure that Governments are severely underfunded and that their capacity to both provide public services and regulate, monitor, ameliorate and, when necessary, supplement private sector activities relating to the public good is greatly constrained.

72. Human rights groups need to highlight the dire consequences, not just for inequality but for human rights in general, of starving Governments of revenue. They need to make the case in favour of a balanced and progressive fiscal regime in the interests of society at large.[117]

D. Reclaim the moral high ground

73. Ironically, the moral high ground of rights language is too often yielded to the privatizers. Where human rights advocates often shy away from asserting a human right to health, to water or to equal access to justice, for fear that such language might alienate conservatives, privatization advocates promiscuously invoke the language of freedom, property rights, autonomy and dignity, albeit often in ways that are entirely alien to agreed international human rights standards. Even the "social contract" is now apparently best achieved through privatization.[118]

74. Rather than abandoning rights language in the context of responding to privatization, both the discourse and the substance of rights need to become the key battleground. Societies that constantly proclaim that human rights are inalienable cannot permit privatization to alienate them.

E. Reset the default

75. The longer-term challenge, which human rights actors certainly cannot achieve on their own, is to reverse the presumption, now fully embraced by actors such as the World Bank, that privatization is the default setting and that the role of the public sector is that of a last-resort actor that does what no one else can or wants to do. Human rights groups need to begin systematically addressing the implications of privatization and documenting and exposing situations in which privatization has generated rights-deficient outcomes. The challenge is to uphold human rights standards, and not just to ask whether public or private actors have performed better.

---

[117] See Nicholas Lusiani and others, *Assessing Austerity: Monitoring the Human Rights Impacts of Fiscal Consolidation* (Centre for Economic and Social Rights, 2018).

[118] See Business and Sustainable Development Commission, *Better Business, Better World*, p. 82.

F. Ensure the centrality of human rights in the privatization framework

76. Human rights standards are currently either marginal to or entirely absent from the frameworks governing privatization. This is by design, not by accident, and reinforces the assumption that privatization is on occasion undertaken precisely in order to avoid the constraints that respect for human rights would otherwise apply. Even where this is not the case, the resulting reality is that large swathes of public life are increasingly devoid of human rights protections.

G. Reimagine human rights accountability

77. Accountability is the linchpin of human rights, but privatization has rendered existing mechanisms increasingly marginal. The Human Rights Council, the special procedures system, the treaty bodies and the universal periodic review have barely made a dent in the task of ensuring meaningful accountability on the part of privatized entities. The latter rarely, if ever, engage in a dialogue, constructive or otherwise, with international human rights bodies in relation to alleged rights violations. Instead, they enjoy a degree of immunity that many Governments might relish.

78. Efforts to develop a meaningful legal framework to regulate corporate human rights practices have so far failed, and future prospects are far from encouraging. The challenge, therefore, is to explore ways in which existing mechanisms can be reformed and adapted. New coalitions need to be built, new methods developed and new pressure points identified. Weak national corporate watchdog bodies, often captured by the interests that they are supposed to be monitoring, are no substitute for the independence and impartiality of human rights monitoring. National and regional human rights institutions, in particular, need to explore innovative approaches.

H. Reform public sector accountability

79. Inadequate public sector accountability helped to facilitate the rise of privatization. But even as that has improved dramatically in many countries, the relevant institutions are being starved of resources. This in turn undermines some of the devices promoted by privatization proponents to ameliorate its impact, since they often assume the existence of either a willing and empowered State-sponsored regulatory framework or the functioning of a highly competitive market. And yet it is very often the case that the terms upon which privatization takes place effectively preclude the meeting of either of these two conditions. Even official development assistance, which is also under attack, is being redirected to the private sector rather than being used to strengthen the public sector, for which, ultimately, there is no substitute that will advance respect for human rights.

80. One of the ironies of the move to promote public-private partnerships is that most of their proponents at least pay lip service to the need for countries entering into them to have a strong domestic institutional capacity to create, manage and evaluate them. Yet this is precisely the capacity that is so often lacking in such contexts.

IX. Conclusions and recommendations

81. Neoliberal economic policies are aimed at shrinking the role of the State, especially through privatization. This agenda has been remarkably successful in recent years and continues to be promoted aggressively by the World Bank, IMF, parts

of the United Nations and the private sector. The logic of privatization assumes no necessary limits as to what can be privatized, and public goods ranging from social protection and welfare services, to schools, pension systems, parks and libraries, and policing, criminal justice and the military sector, have all been targeted.

82. Privatization is premised on assumptions fundamentally different from those that underpin respect for human rights, such as dignity and equality. Profit is the overriding objective, and considerations such as equality and non-discrimination are inevitably sidelined. Regulatory and other constraints are viewed as obstacles to efficiency, and accountability for other than economic outcomes sits uneasily at best. Rights holders are transformed into clients, and those who are poor, needy or troubled are marginalized. Caring, compassion, social interaction, solidarity and community, among other things, are alien concepts that belong elsewhere. While civil society has a vital role to play, it cannot possibly shoulder the burden on its own, with neither adequate resources nor authority. There is no substitute for the public sector to coordinate policies and programmes to ensure respect for human rights. Yet privatization directly undermines the viability of the public sector and redirects government funds to subsidies and tax breaks for corporate actors.

83. The consequences for human rights are overwhelmingly negative. Human rights standards are rarely included in privatization agreements. They are systematically absent from guidelines governing both processes and outcomes. With some exceptions, privatized entities are rarely held meaningfully to account, and government and quasi-government agencies responsible for such tasks are often either underfunded or captured by the relevant industry. While it is clear both from the evidence that exists and from the basic assumptions underpinning privatization that it negatively affects the lives and rights of people living on lower incomes or in poverty, the unsurprising fact is that few detailed studies have been undertaken and that relevant data are often not collected. In a 10-year review of World Bank-supported public-private partnerships, it was concluded that the projects were "largely successful in achieving their development outcomes, but data are scarce on the effects on the poor", as well as on access and service delivery. In other words, business performance is carefully tracked, but rights-related or poverty-related impact studies are rare.[119]

84. In the face of externally or internally driven demands for "fiscal consolidation" (austerity), Governments retreat from direct service provision, trade short-term deficits for windfall profits from the sale of public assets, and push hidden financial liabilities down the road for future generations. The opportunity to shed responsibility, rather than to exercise it at arm's length, becomes irresistible. Although it is often suggested that a fully human-rights-compliant regulatory regime can be transferred to the private sector, as argued in the present report, this is a contradiction in terms.

85. The human rights community often seems to assume that privatization involves little more than a change in personnel and uniforms and that public-sector-like obligations and comparable levels of accountability could be maintained, if only the conditions attached were sufficiently detailed and demanding. But this assumption is deeply mistaken. It ignores the motivations driving the process as well as the essential unwillingness of the private sector to take on rights-related obligations, the inability of pared-down Governments to exercise meaningful supervision, the difficulty of monitoring disparate private providers, the removal of much economic decision-making from the purview of democratic contestation, and the wide-ranging

[119] See World Bank, *World Bank Group Support to Public-Private Partnerships: Lessons from Experience in Client Countries, FY02-12* (Washington, D.C., 2015), p. xiv.

consequences of empowering profit-seeking corporate actors in what used to be the public sphere.

86. Privatization also undermines democracy by marginalizing the role of Governments in deciding on the allocation of public goods and services, thus giving citizens even less incentive to participate in elections. A trend towards political demobilization, especially affecting low-income persons, has occurred in many States in recent years, and austerity policies closely linked to privatization have created fertile ground for the rise of populist, anti-human-rights politicians.

87. While in theory privatization is neither good nor bad, the ways in which it has most often occurred in recent decades and the ideological motivations driving much of it call for a different set of responses from the human rights community. In addition to the long-term strategy outlined above, immediate steps should be taken to:

- Insist that appropriate standards be set by public and private actors involved with privatization to ensure that data on human rights impacts are collected and published, and that confidentiality carve-outs are strictly limited;
- Undertake systematic studies of privatization's impact on human rights in specific areas, and on poor and marginalized communities;
- Insist that arrangements for the privatization of public goods specifically address the human rights implications; and
- Explore new ways in which treaty bodies, Special Procedures, regional mechanisms, and national institutions can meaningfully hold States and private actors accountable in privatization contexts.

United Nations A/73/397

General Assembly

Distr.: General
26 September 2018

Original: English

Seventy-third session
Agenda item 74 (c)
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Letter dated 21 September 2018 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the comments and observations on the report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran (A/73/299) (see annex).

It would be appreciated if the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 74 (c).

(*Signed*) Gholamali **Khoshroo**
Ambassador
Permanent Representative

18-16013 (E) 041018

Please recycle

Annex to the letter dated 21 September 2018 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General

Comments and observations by the Islamic Republic of Iran on the report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran (A/73/299)

1. The report, A/73/299, yet again brings to light manipulation and politicization that exist in the United Nations human rights mechanisms. Producing annually four nearly identical reports on the situation of human rights in Iran should solely be attributed to the adoption of a harmful selective approach based on double standards, an approach that further erodes the integrity and credibility of the United Nations human rights mechanisms. Beyond political considerations, there is no credible ground for the duplication of allegations against Iran four times a year. The report under question is the result of a counterproductive mandate, which makes it objectionable in its entirety, notwithstanding its attempt to reflect, though partially and with reluctance, the comments provided on the report by Iran.

2. The report's adoption of a selective approach on the human rights of Iranians is disturbing. It is expected that reports of this nature be all-inclusive and address all of the human rights of the entire population without distinction. However, the report sounds as selective as the mandate itself. The reimposition of illegal and illegitimate sanctions against Iran after the unilateral withdrawal of the United States from the Iran nuclear deal, which was unanimously adopted by the Security Council with the support of the United States itself, was barely touched upon by the authors of the report. The genocidal sanctions indiscriminately violate the basic economic and social rights of ordinary Iranians, and yet the report chose not to even mention it.

3. Bearing in mind the observations of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights concerning the United States anti-Iranian sanctions, the absence in the report of any reflection on such an important issue is thought-provoking. It is worth recalling that the Special Rapporteur underlines that "these unjust and harmful sanctions are destroying the economy and currency of Iran, driving millions of people into poverty and making imported goods unaffordable". He further underscores that "the current system creates doubt and ambiguity which makes it all but impossible for Iran to import these urgently needed humanitarian goods. This ambiguity causes a 'chilling effect' which is likely to lead to silent deaths in hospitals as medicines run out." Apparently, the destiny and welfare of millions of Iranians does not even deserve a single paragraph in the whole 18-page report! It is also instructive to notice that, beyond the said Special Rapporteur, who has spoken out against this crime, other relevant mandate holders who regularly issue statements on Iran, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and others in the Secretariat are yet to express themselves on this apparent indiscriminate and genocidal mass violation of the human rights of Iranians.

4. Similar to previous reports, a large portion of the text is allocated to openly or tacitly defending criminals, armed drug dealers, terrorists, secessionists and spies, the same people who denied recognizing any right for their victims. If the authors were unable to defend the violated rights of these victims, they can at least avoid disrespecting them. The overwhelming attempt of the report to whitewash the vicious conduct of criminals against ordinary Iranian citizens is disturbing. Unfortunately, the grievances of the victims of these villains are left unheard. Seemingly, their human rights and voice were not worthy enough. The persistent inclination of the report in

questioning the Government's decisiveness and dedication in ensuring its citizens' safety and security is alarming.

5. Despite the fact that, since 2013, as also mentioned in the report, "some 43,000 demonstrations have been held across the Islamic Republic of Iran", the report still asserts "an intensified crackdown" on protesters! The figures indicate that almost 20 demonstrations have been held on a daily basis in the country. Holding such a high number of peaceful assemblies is a clear indication of a vibrant democratic and open society and a sign of strength. Iran's hypocrite critics and their clients are challenged to guarantee the same right for their own citizens! Furthermore, an overwhelming majority of the demonstrations were held in a peaceful environment. Like any rule-based society, calls for vandalism and destruction of public properties or the actual occurrence of such attacks are expected to be properly responded to by law enforcement officials. In the very few instances that such containment measures were put in place, maximum restraint was observed by police forces. The injuries inflicted on them were even greater than those of the vandals in some instances!

6. The weight put by the report on the situation of Iranians with dual nationality further highlights its double standard approach towards Iranians' human rights. Whilst hundreds of thousands of Iranians with dual nationality regularly visit their home country, the report conveniently disregards the fact that a few governments, in particular the United States, continue to exploit systematically the vulnerabilities of their citizens with Iranian backgrounds. In place of making misplaced judgments, the report could call for an end to the abuse of these individuals by governments who are engaging them in suspicious activities against Iran's national security. It is disappointing that the authors chose to target once more the Government for its endeavour to ensure the security of its citizens against external interference. Meanwhile, the destiny of tens of Iranians around the world who are in custody due to dubious and baseless accusations levelled against them by the United States government, i.e. violation of United States illegal sanctions, was again unworthy of attention for the authors of the report. The story of an innocent Iranian pregnant woman imprisoned in Australia and forced to give birth in prison who is still in custody was not interesting enough for them. Neither were the ceaseless sufferings of innocent Iranians living for years in custody despite their deteriorating health conditions and ageing.

7. The Government of the Islamic Republic of Iran has earnestly pursued maintaining an open and dynamic media environment to ensure each citizen's safe and unhindered access to the Internet. The high number of active newspapers, media outlets, social media platforms and Internet users attests to such intention. Free and open media as well as social media networks routinely contribute to the decision-making processes across the political system. However, Iran is and has openly and fiercely been the target of vicious organized media warfare planned and funded by adversary governments from outside the country, notably the United States, the United Kingdom and Israel. Furthermore, thousands of fake accounts on social media platforms that run from outside of Iran systematically pump blind hate, fabricate false news and provoke disruption and destruction. In the past, Iranians have bitterly experienced the result of remaining indifferent to these well-funded, organized and ferocious campaigns that run against their national security and interest. It is regrettable that the report fails to duly recognize the ongoing open assault against Iranians through abusing media and the Internet platforms. Worse, the report even assumes that the security and privacy of Iranians could be better served if their data were stored in servers outside of Iran rather than inside the country!

8. The report fails to reflect a balanced and neutral account of the situation. It is clearly hesitant in recognizing and appreciating the positive policies undertaken by the Government and consequent developments. Its attempt to even disparage such

measures by questioning their relevance or effectiveness is disappointing. The lukewarm reaction of the report to the implementation of a major amendment to the drug-trafficking law is worth mentioning. Iran has seen thousands of its police officers lose their lives within the course of its relentless campaign against regional and international armed drug traffickers. Little was ever heard from the United Nations on their violated rights and on the ultimate price that they paid to combat the evil of addiction. However, the report does not even miss the opportunity to express its concern over the rights of armed drug dealers or those who use children to smuggle drugs that, according to the amended law, may still be subject to the death penalty if they get arrested.

9. Specific cases have been raised in the report that have been separately and extensively responded to in detail. However, the gravity of such cases, which are regrettable in their own place, do not warrant a country-specific report. No country can claim to be perfect; neither does Iran. There is always room and the possibility to improve practices as well as laws to the extent that they do not contradict the social norms acceptable to citizens. Obviously, no country can or is expected to abandon its laws just to curry favour with the few who wish to impose their way of living on others. As a matter of fact, the foundation of our laws is shared by almost all countries of the region that Iran is part of and their application extends beyond a single country or even region.

10. Mutual respect and dialogue serve as the right path to address any genuine concern regarding human rights. To enhance the credibility of human rights discourse, we seek respectful dialogue without recrimination or blame games and welcome meaningful engagement with all serious partners. President Rouhani's policy of constructive engagement with the world promises new horizons for dialogue-based cooperation, understanding and mutual respect in all fields, including human rights. In this context, the ongoing bilateral human rights dialogue and technical cooperation with several countries are noteworthy. As also recognized by the report, the Islamic Republic of Iran is committed to the universal periodic review while having extended its hands for further cooperation and dialogue to OHCHR. Iran is constructively engaged with human rights treaty body mechanisms as well as human rights thematic mandate holders. Iran continues to call for dialogue based on understanding, cooperation and mutual respect.

United Nations A/73/398

General Assembly

Distr.: General
27 September 2018

Original: English

Seventy-third session
Agenda item 74 (c)
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Islamic Republic of Iran*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Javaid Rehman, submitted in accordance with Human Rights Council resolution 37/30.

* The present report was submitted after the deadline in order to reflect the most recent information.

18-16103 (E) 041018

Please recycle

Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

Summary

The Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Javaid Rehman, submits his first report to the General Assembly pursuant to Human Rights Council resolution 37/30, following his appointment in July 2018. The present report is based on consultations held with interlocutors in Geneva in August 2018 and sets out some consistently documented issues of concern as well as some steps envisaged towards the fulfilment of the mandate of the Special Rapporteur.

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 37/30, in which the Council renewed the mandate of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran. In the resolution, the Council requested that the Special Rapporteur submit a report on the implementation of the mandate to the General Assembly at its seventy-third session and to the Council at its fortieth session. The Council also called upon the Government of the Islamic Republic of Iran to cooperate fully with the mandate holder, to permit access to visit the country and to provide all information necessary to enable the fulfilment of the mandate.

2. On 6 July 2018, Javaid Rehman was appointed as the third Special Rapporteur on the situation of human rights in the Islamic Republic of Iran since the mandate had been re-established in 2011. He commenced his duties officially on 13 July 2018. The former mandate holder, Asma Jahangir, held the mandate from November 2016 until her sudden passing in February 2018. Prior to Ms. Jahangir, Ahmed Shaheed held the mandate from June 2011 to September 2016.

3. Upon his appointment, the Special Rapporteur wrote to the Government of the Islamic Republic of Iran to seek its cooperation with the mandate and to request a visit to the country. He subsequently issued a statement, on 6 August 2018,[1] in which he explained that he looked forward to constructive engagement with the authorities with a view to creating a space for an informed and open dialogue. The Special Rapporteur also added that he would seek to build on the previous engagement between his predecessor and the Iranian authorities regarding the full compliance of the State with its international human rights obligations.

4. The Special Rapporteur conducted his first official mission to Geneva from 21 to 25 August 2018. During his visit, he met with a number of interlocutors, including Esmaeil Baghaei Hamaneh, Permanent Representative of the Islamic Republic of Iran to the United Nations Office and other international organizations in Geneva; members of civil society; human rights defenders; and representatives of a number of permanent missions based in Geneva. During his meeting with Mr. Hamaneh on 24 August, the Special Rapporteur welcomed the Ambassador's assurances of an enhanced focus on human rights and a willingness to engage in a spirit of cooperation with the Special Rapporteur. The Special Rapporteur further emphasized the importance of conducting a visit to the Islamic Republic of Iran at the invitation of the Government. In comments provided on the present report, the Government declared its willingness to meet with the Special Rapporteur to discuss mutually agreed areas of technical cooperation, with the aim of providing him with the required information.

5. Since his appointment, the Special Rapporteur has reflected on the various substantive issues and challenges relating to the mandate and on the proposed methodology for his work. In this initial stage of the mandate and in the present report, the Special Rapporteur will elucidate the methodology that he intends to pursue in fulfilling his mandate and will present some consistently documented issues of concern regarding the human rights situation in the Islamic Republic of Iran. Those issues of concern have been developed by reviewing the previous reports and observations of his predecessors, of the Secretary-General and of the international human rights mechanisms; assessing initial reports received from various sources following his appointment; and undertaking preliminary discussions with various interlocutors. Accordingly, the present report does not present an exhaustive picture

[1] Office of the United Nations High Commissioner for Human Rights (OHCHR), "New UN human rights expert on Iran seeks cooperation and dialogue with Government", 6 August 2018.

of the human rights situation in the country, but instead seeks to highlight some of the key issues of concern which have been raised repeatedly in the aforementioned context. Such issues include alleged violations of the following: the right to life, in particular the execution of juvenile offenders; the prohibition of torture and other ill-treatment; the right to freedom of opinion, expression and assembly; the rights of women and girls; and the rights of religious and ethnic minorities. The Special Rapporteur intends to seek further information on these issues of concern and to engage with the Government and other interlocutors to that end. On the basis of his preliminary assessment, the Special Rapporteur also intends to reflect in the course of his mandate on the relationship between violations of civil and political rights and violations of economic, social and cultural rights in the Islamic Republic of Iran. In addition, the Special Rapporteur currently intends to address, inter alia, the situation of human rights defenders, foreign and dual nationals, the alleged summary executions in 1988, as well as the rights of specific groups, in particular those based on disability, sexual orientation and gender identity.

II. Methodology of work

6. In the conduct of his mandate, the Special Rapporteur will be guided by the provisions of the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, as enunciated in Human Rights Council resolution 5/2. In accordance with the Code of Conduct, the Special Rapporteur will act in an independent capacity and perform his mandate through a professional and impartial assessment of facts based on internationally recognized human rights standards and free from extraneous interference or pressure. The Special Rapporteur is committed to exercising his mandate in a manner free from politicization and will be guided solely by the aim of assisting the State in complying with its international human rights obligations in an incremental and constructive yet robust manner.

7. The Special Rapporteur will seek the cooperation of the authorities in the Islamic Republic of Iran and seek to establish and report on the facts, based on objective and reliable information on the compliance of the State with its human rights obligations. With this in mind, the Special Rapporteur has reached out to the Iranian authorities, held an initial formal meeting and expressed his strong interest in visiting the Islamic Republic of Iran. The Special Rapporteur will also seek information from the Iranian authorities on human rights issues, in particular those highlighted in resolutions of the General Assembly and the Human Rights Council and those which are a matter of documented concern for the United Nations human rights treaty bodies. During his proposed visit, the Special Rapporteur would aim for meaningful access to people and places of interest with a view to establishing the facts about the human rights situation in the country.

8. Since his appointment, the Special Rapporteur has had several meetings with members of civil society, including with the Iranian diaspora community in the United Kingdom of Great Britain and Northern Ireland and during his first formal mission to Geneva in August 2018. He has received information from a significant number of organizations and individuals with respect to the human rights situation in the country. The Special Rapporteur has also received a substantial body of documentation of alleged violations of human rights taking place in the Islamic Republic of Iran. Individual testimonies and witness statements, including those to be collected during country visits, will constitute a substantial part of the information to be gathered pursuant to the Special Rapporteur's mandate. The Special Rapporteur will request the cooperation of the Iranian authorities when following up on allegations as part of his efforts to examine individual cases. In forming an objective and impartial view, the Special Rapporteur will consider information obtained from all credible sources,

including government statements, comments and information on existing laws, new legislation, policies and State practices. He will also assess the responses of the Government to communications transmitted to the Islamic Republic of Iran by special procedures of the Human Rights Council, along with comments and information produced by the Government in response to his reports. In preparing the present report, the Special Rapporteur has also considered the comments of the Government of the Islamic Republic of Iran on the most recent report of his predecessor (A/HRC/37/68/Add.1). In line with his mandate, the Special Rapporteur will monitor national and international media reports as they relate to the situation of human rights in the country and will assess information prepared and submitted by national and international civil society organizations.

9. The Special Rapporteur takes the view that the outcome of the universal periodic review of the Islamic Republic of Iran, which was conducted in October 2014, provides a sound platform for collaboration with the Iranian authorities. In this regard, he believes that he could contribute to the efforts of the Islamic Republic of Iran to implement the recommendations resulting from the review which have been accepted or partially accepted for implementation, and aims to contribute to following up on, monitoring and reporting on the implementation of those recommendations. With this in mind, the Special Rapporteur intends to engage fully and constructively with the Government with a view to reviewing its position as regards those recommendations that have not been accepted. In comments provided on the present report, the Government highlighted its participation in the universal periodic review, its acceptance of nearly 65 per cent of the recommendations and the preparation of a voluntary mid-cycle report.[2]

10. In addition to the commitments made during the universal periodic review, the Islamic Republic of Iran has committed to a number of human rights obligations, as evidenced in its ratification of international human rights treaties. The Special Rapporteur will seek to follow up on the country's compliance with its international human rights obligations. The Islamic Republic of Iran ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on 24 June 1975. The Islamic Republic of Iran also became a party to the Convention on the Elimination of All Forms of Racial Discrimination on 29 August 1968. The Islamic Republic of Iran ratified the Convention on the Rights of the Child on 13 July 1994 and accepted the obligations under the Optional Protocol thereto on the sale of children, child prostitution and child pornography on 26 September 2007. On 23 October 2009, the Islamic Republic of Iran acceded to the Convention on the Rights of Persons with Disabilities.

11. The Islamic Republic of Iran has yet to submit its periodic report to the Human Rights Committee on the implementation of the International Covenant on Civil and Political Rights, which was due in November 2014, and its report to the Committee on Economic, Social and Cultural Rights on the implementation of the International Covenant on Economic, Social and Cultural Rights, which was due in May 2018. The combined third and fourth periodic reports of the Islamic Republic of Iran (CRC/C/IRN/3-4) were considered by the Committee on the Rights of the Child on 11 and 12 January 2016. The Committee adopted its concluding observations on 29 January 2016 (CRC/C/IRN/CO/3-4). The Committee on the Rights of Persons with Disabilities considered the initial report submitted by the Government (CRPD/C/IRN/1) on 22 and 23 March 2017 and adopted its concluding observations on 5 April 2017 (CRPD/C/IRN/CO/1). The Special Rapporteur notes the comment provided by the Government on the present report that it plans to submit reports to

[2] Islamic Republic of Iran, High Council for Human Rights, *UPR Midterm Report (2015–2016)*. Available at https://lib.ohchr.org/HRBodies/UPR/Documents/Session20/IR/Iran2ndCycle.pdf.

the treaty bodies in the course of its working programme. The Special Rapporteur further intends to engage constructively with the Government in following up on the concluding observations of the treaty bodies.

12. The Islamic Republic of Iran has not ratified a number of international human rights treaties. These include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women and all of the individual complaint procedures and inquiry procedures, the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The Special Rapporteur will encourage the Islamic Republic of Iran to ratify the aforementioned treaties, which he believes will enhance the efficacy of human rights implementation in the country.

13. The Special Rapporteur will work in collaboration with thematic special procedures of the Human Rights Council on urgent appeals and other communications and prepare his own appeals and communications as necessary in fulfilment of his mandate. In this context, the Special Rapporteur encourages the Government to provide substantive replies to the communications transmitted and looks forward to constructively engaging with the Government on matters raised in the process.

14. The Special Rapporteur takes a positive view of the strong advocacy role of civil society and human rights defenders in the Islamic Republic of Iran. In fulfilment of his mandate, he will engage with civil society representatives in accordance with the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council. The Special Rapporteur will seek to facilitate a space for non-politicized discussions, advocacy and the study of the human rights situation in the country through engagement with civil society and academic expertise. The Special Rapporteur intends to engage with the media with measured and objective analysis on progress achieved and challenges concerning the human rights situation in the country. The Special Rapporteur takes the view that constructive engagement with the Government of the Islamic Republic of Iran and media advocacy will provide parallel yet appropriate avenues for highlighting progress, reporting on human rights violations and advocating for the need for redress of such violations.

III. Human rights situation: consistently documented issues of concern

A. Right to life and the death penalty

1. Overview

15. The violation of the right to life and concerns related to a lack of adherence to due process have been consistent themes in previous reports of the Secretary-General and the predecessors of the Special Rapporteur (see, e.g., A/HRC/37/24, paras. 6–17, and A/HRC/37/68, paras. 13–20). The Government received 41 recommendations related to its use of capital punishment during the second cycle of the universal periodic review, in 2014 (see A/HRC/28/12 and A/HRC/28/12/Corr.1, para. 138). Recommendations to the Government included abolishing the death penalty for juvenile offenders; establishing a moratorium on the death penalty for crimes not considered "most serious" by international standards; establishing a moratorium on the use of capital punishment; and banning public executions. None of the recommendations were accepted. The Special Rapporteur welcomes the progress made in specific aspects of drug trafficking laws which were highlighted by his predecessor (see A/HRC/37/68, paras. 15–17), while also noting concerns expressed

by his predecessor about ensuring due process and a fair trial for those accused of capital offences (ibid., paras. 58–61). In comments provided on the present report, the Government stated that capital offences are adjudicated in the presence of the prosecutor's representative, the accused and his/her lawyer, and that the final verdict is issued after convening hearings in the course of a fair trial and upon completion of the required proceedings. It further stated that meetings without a lawyer had no legal effect and that decisions made and rulings issued in such cases could be disaffirmed by the Supreme Court.

2. Execution of juvenile offenders

16. The Special Rapporteur reiterates the grave concerns previously expressed by the Secretary-General, the United Nations High Commissioner for Human Rights and the previous Special Rapporteur with respect to the continuing execution of juvenile offenders in the Islamic Republic of Iran, noting that at least four juvenile offenders were executed in the first half of 2018, with several others facing imminent execution. Amir Hussein Pourjafar, who was convicted of committing murder and rape when he was 16 years old, was executed in January.[3] Other juvenile offenders executed in the same month include Ali Kazemi, convicted of committing murder at age 15, and Mahboubeh Mofidi, convicted of committing murder at age 16.[4] Abolfazl Chezani Sharahi, convicted of murder at age 15, was executed in June.[5] In comments provided on the present report, the Government stated that the aforementioned individuals were executed in accordance with the punishment of *qisas* (retaliation in kind) for the crime of murder at the request of the next of kin of the victim. The Government further stated that it expends extensive effort to satisfy the requirements of the next of kin and convert *qisas* to *diyeh* (a cash fine). In this regard, while acknowledging such efforts, the Special Rapporteur believes that the Government should not delegate its responsibility to protect the right to life to the victim's next of kin. The Special Rapporteur further reiterates the concerns expressed by the United Nations High Commissioner for Human Rights in February 2018 with respect to the retention of the death penalty under the amended Islamic Penal Code for boys who are at least 15 lunar years of age and girls who are at least 9 years of age for *qisas* or *hudud* crimes such as homicide, adultery, rape, theft, armed robbery or sodomy, in contravention of the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.[6]

17. In the course of his mandate, the Special Rapporteur intends to closely follow the situation of juvenile offenders on death row and the legislation concerning the application of the death penalty to such individuals. In this context, the Special Rapporteur also intends to seek information on the application of the 2013 amendment to the Islamic Penal Code (article 91) that allows judges to pronounce alternative sentences in circumstances where there is doubt as to the mental development of the juvenile at the time of the offence or if the juvenile does not realize the nature of the crime committed, in the light of concerns expressed by the Committee on the Rights of the Child about its effective application (see CRC/C/IRN/CO/3-4, para. 35). The Special Rapporteur calls upon the Government to build on that amendment and introduce a further amendment that, affirming the lack of mental development of a juvenile, absolutely prohibits the execution of persons who were under the age of 18 years when they committed an offence. In comments provided on the present report, the Government stated that it had established a new task force on the

[3] OHCHR, "Zeid urges Iran to stop violating international law by executing juvenile offenders", 16 February 2018.

[4] Ibid.

[5] OHCHR, "Zeid appalled by execution of juvenile offenders in Iran", 28 June 2018.

[6] OHCHR, "Zeid urges Iran to stop violating international law by executing juvenile offenders".

prevention of deprivation of life, made up of a subcommittee of the Executive Committee on the Protection of the Rights of Children and Adolescents in the General Justice Department of the Province of Tehran, which has now been extended to all provinces of the country. The Special Rapporteur stands ready to build on the declared intent of the Government to address the situation of juvenile offenders on death row and is ready to engage further with the Government and the task force on this issue.

3. Amendment to the drug trafficking law

18. The Special Rapporteur welcomes the amendment to the drug trafficking law that entered into force on 14 November 2017. According to the amended law, punishments for certain drug offences that previously carried the death penalty or life imprisonment are now subject to a maximum prison term of 30 years. In addition, the quantity of drugs required to impose a death sentence was increased. The Special Rapporteur further notes encouraging reports of a significant reduction in the number of executions relating to drug offences, with only two such cases of the death penalty reported thus far in 2018,[7] compared with 213 in 2017 (see A/HRC/37/24, para. 6).

19. The Special Rapporteur notes, however, that the amended drug trafficking law retains mandatory death sentences for a wide range of drug-related offences. The Special Rapporteur further notes that the death penalty is applied in such circumstances in the context of concerns raised by his predecessor and by the Secretary-General on the lack of adherence to due process and the right to a fair trial (see A/HRC/37/68, paras. 58–61, and A/HRC/37/24, paras. 7–8). In the light of the irreversible nature of capital punishment and those concerns, the Special Rapporteur calls upon the Government to ensure full compliance with the safeguards guaranteeing protection of the rights of those facing the death penalty.[8]

20. More broadly, the Special Rapporteur acknowledges the seriousness of drug trafficking and dependence and their consequences. However, he calls upon the Government to review its policy of retaining the death penalty for certain drug offences. In this regard, he points to the aforementioned amendment to the drug trafficking law, which appears to represent a recognition on the part of lawmakers and policymakers in the country of the ineffectiveness of the death penalty as an appropriate deterrent. The Special Rapporteur further welcomes the recent government initiative for treatment and enhanced programmes for the prevention of drug addiction as more effective mechanisms for addressing drug dependence (see A/HRC/37/68/Add.1, p. 6).

B. Torture and other cruel, inhuman or degrading treatment or punishment

21. The Special Rapporteur is concerned by reports received by his predecessor on the commission of torture or other cruel, inhuman or degrading treatment or punishment, including floggings and amputations (see A/HRC/37/68, paras. 23–29). The Special Rapporteur contends that such conduct is in violation of articles 7 and 10 of the International Covenant on Civil and Political Rights (see CCPR/C/79/Add.85, para. 9) and disagrees with the contention of the Government that "the physical punishments which are anticipated in the laws of the Islamic Republic of Iran are legislated and legalized, and therefore they are not in contradiction with the State's obligation under paragraph 7" of the Covenant (see A/HRC/37/68/Add.1, p. 13). The Special Rapporteur reminds the Government that violating *jus cogens* norms such as the prohibition of torture or other cruel, inhuman or degrading treatment or

[7] Iran Human Rights, "Iran: execution of a prisoner on drug-related charges", 13 August 2018.

[8] Economic and Social Council resolution 1996/15 (1996).

punishment cannot be justified on the basis of inconsistent domestic laws. The Special Rapporteur further recalls that, under article 39 of the Constitution, "all forms of violation against the honor and dignity of any person who is legally arrested, detained, imprisoned, or sent into exile" are prohibited,[9] while noting that the Government did not accept any of the 20 recommendations regarding torture and other ill-treatment considered during the universal periodic review in 2014 (see A/HRC/28/12/Add.1). In comments provided on the present report, the Government stated that, according to articles 570, 578, 579 and 587 of the Penal Code, perpetrators of torture or other ill-treatment are subject to severe penalties, and that any confession or information obtained from the accused by torture and ill-treatment is not considered credible. In the course of his mandate, the Special Rapporteur intends to engage with the relevant government bodies to seek further information to assess the incidence of such practices in the country.

C. Impact of economic sanctions

22. The Special Rapporteur intends to monitor and report on the potential negative impact of sanctions on the enjoyment of rights, in particular in the light of the decision by the United States of America on 8 May 2018 to withdraw from the Joint Comprehensive Plan of Action. As noted in previous reports of the Secretary-General and of the Special Rapporteur's predecessors (see A/HRC/37/68, para. 6, A/69/306, paras. 45–51, and A/HRC/22/56, paras. 72–75), the impact of sanctions, which at present target mainly banking transactions, could increasingly affect ordinary Iranians and their enjoyment of a range of human rights, notably economic and social rights. By preventing financial transfers to the country, the reimposition of sanctions is likely to further hinder the availability and distribution of essential medical and pharmaceutical equipment and supplies, potentially increasing mortality rates. The Special Rapporteur seeks the cooperation of the Government in assessing the impact of sanctions on the economic and social rights of those residing in the country.

D. Freedom of peaceful assembly

23. As has been previously documented, widespread protests were held in the Islamic Republic of Iran earlier in the year. The protests, which took place during a period of 12 days from 28 December 2017 to 9 January 2018, were on a scale unparalleled since the presidential election of 2009 and spread across the country. Reports indicate that the reasons for the protests included widespread discontent related to unemployment, inflation and rising living costs (see A/HRC/37/24, para. 32) and followed the publication of the government budget for the Persian year 1397 (March 2017–March 2018). The Special Rapporteur is aware of numerous reports indicating a violent crackdown on protesters by security forces, which led to the death of at least 22 people (see A/HRC/37/24, para. 33). In comments provided on the present report, the Government stated that the right to peaceful demonstrations is recognized by the Constitution and that security forces responded with restraint. The Special Rapporteur reiterates the concerns expressed by the United Nations High Commissioner for Human Rights and special procedures mandate holders at the time[10] and, in the course of his mandate, intends to further monitor and report on violations

[9] Hirbod Papan-Matin (trans.), "The Constitution of the Islamic Republic of Iran (1989 Edition)", *Iranian Studies*, vol. 47, No. 1, pp. 159–200 (2014). Available at www.wipo.int/edocs/lexdocs/laws/en/ir/ir001en.pdf.

[10] OHCHR, "UN human rights chief urges Iranian authorities to defuse tensions, investigate protest deaths", 3 January 2018; and "Iran: UN experts urge respect for protesters' rights", 5 January 2018.

during and subsequent to the protests. In particular, the Special Rapporteur is concerned by allegations of unlawful arrests and detention, of protesters indicted on vague charges such as "corruption on earth", or *moharebeh*, of lack of access to legal representation and of deaths in detention. In comments provided on the present report, the Government stated that a handful of individuals had been arrested by police forces; 80 per cent of them had been released on the same day and 15 per cent had been released some days later.

E. Freedom of opinion and expression and access to information

24. The protests in early 2018 also highlighted challenges faced by those residing in the Islamic Republic of Iran in enjoying freedom of opinion and expression and access to information. In this context, special procedures mandate holders issued a statement in January expressing concern following the decision to temporarily block several social media platforms, including Instagram and the messaging application Telegram.[11] More broadly, a number of major social networking websites, including Facebook, Twitter and YouTube, are currently banned in the Islamic Republic of Iran. On 30 April 2018, a judicial order was issued stating that Telegram would also be permanently banned on the grounds that it was being used to spread "propaganda" and "pornography" and to incite "terrorist activities".[12] The Special Rapporteur is of the view that communication applications such as Telegram and Instagram should be seen as tools that enhance the freedom of opinion and expression and access to information as enshrined in article 19 of the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a party. In the course of his mandate, the Special Rapporteur intends to seek further information on such issues, including with a view to reviewing the Computer Crimes Law, the Penal Code and the role of the Supreme Cyberspace Council.

F. Situation of women and girls

25. The Special Rapporteur notes that the Government accepted 27 out of 60 recommendations with respect to the rights of women during the universal periodic review in 2014 (see A/HRC/28/12/Add.1). In this regard, the Special Rapporteur welcomes the opportunity to engage in a dialogue with the Government on the implementation of the accepted recommendations, notably those addressing gender-based discrimination, child marriage, access to health and education, political and economic participation and protection against domestic violence.

26. The Special Rapporteur is encouraged by reports of progress in the promotion and protection of women's rights since President Rouhani was re-elected, in particular the introduction of the comprehensive bill on ensuring the protection of women against violence[13] and the establishment of the post of Deputy President for Women and Family Affairs. At the same time, the Special Rapporteur recalls that previous reports, including those of his predecessors and the Secretary-General, have consistently raised concerns relating to discrimination against women in law and practice in the Islamic Republic of Iran (see, e.g., A/HRC/37/24, paras. 25–31, and A/HRC/37/68, paras. 62–68). In the course of his mandate, the Special Rapporteur intends to build on that body of work by analysing relevant legislative provisions, including in relation to personal status and the alleged lack of equal rights in marriage,

[11] OHCHR, "Iran: UN experts urge respect for protesters' rights".

[12] Reporters without Borders for Freedom of Information, "Iranian court imposes total ban on Telegram", 4 May 2018.

[13] Islamic Republic of Iran, High Council for Human Rights, *UPR Midterm Report (2015–2016)*.

divorce, child custody and inheritance. The Special Rapporteur also intends to examine reports of discriminatory rules concerning the dress code imposed on women and girls (see A/HRC/37/68, para. 67) and to monitor and report on alleged violations of the right to freedom of opinion and expression of women who have publicly challenged compulsory veiling.

G. Situation of religious and ethnic minorities

27. The Special Rapporteur is concerned by the substantial violations of the rights of religious and ethnic minorities described in the previous reports of his predecessor and the Secretary-General (see A/HRC/37/68, paras. 69–74, and A/HRC/37/24, paras. 48–50), in particular the serious and consistently documented violations of rights of members of the Baha'i community in the Islamic Republic of Iran (see A/HRC/37/68, para. 71). In this regard, allegations of discriminatory policies and practices have been received with respect to the denial of the right to work and to earn a decent living, restriction of access to higher education, the closure of shops and discrimination in policy owing to the fact that Baha'is do not constitute one of the three constitutionally recognized religious minorities in the country. In comments provided on the present report, the Government denied such allegations, stating that "principle 23 of the Constitution stipulates that it is forbidden to enquire about beliefs, and no one can be prosecuted merely because of holding a certain belief". Previous reports have included descriptions of further allegations of discrimination against other communities, including members of the Christian, Baluch, Kurdish, Azerbaijani Turkish and Yarsan communities, as well as members of the Gonabadi Sufi order (see, e.g., A/HRC/37/68, paras. 69–74, A/HRC/34/65, paras. 73–80, A/HRC/37/24, paras. 48–50, and A/72/562, paras. 62–69).

28. Further to communications previously transmitted to the Government by relevant special procedures mandate holders, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, issued a statement on 7 September calling for the Government to halt the imminent executions of three Kurdish prisoners, Zanyar and Loghman Moradi and Ramin Hossein Panahi, amid serious concerns that they had not received fair trials and had been tortured in detention.[14] The Special Rapporteur deeply deplores reports that they were all executed on 8 September despite such concerns. In comments provided on the present report, the Government stated that the aforementioned individuals had received fair trials and that the punishments had been handed down in relation to terrorist offences. As highlighted in the methodology section of the present report, in the course of his mandate the Special Rapporteur intends to seek further information and monitor and report on the rights of religious and ethnic minorities in the country.

29. More broadly, the Special Rapporteur notes that reports of his predecessor have described how some ethnic minority groups in the Islamic Republic of Iran constitute a disproportionately large percentage of persons executed or imprisoned (see A/HRC/37/68, para. 13). In its comments on the most recent report of the previous Special Rapporteur, the Government dismissed such statistics as "completely misleading, distorted and inaccurate" (see A/HRC/37/68/Add.1, p. 5; see also pp. 28 and 29). With a view to engaging in a dialogue with the Government on this issue, the Special Rapporteur proposes that the Government conduct an impartial and objective investigation confirming the number of persons from minority communities who have been executed. Without prejudice to the outcome of such an investigation, if the numbers of executions from minority communities are disproportionate, then

[14] OHCHR, "UN rights experts call on Iran to halt imminent executions of Iranian Kurds", 7 September 2018.

the Special Rapporteur recommends that the Government conduct further investigations and inquiries as to the reasons for such disproportionate numbers and take appropriate remedial action. In comments provided on the present report, the Government stated that according to article 19 of the Constitution, the people of the Islamic Republic of Iran, of any tribe or affiliation, enjoy equal rights, including during all stages of criminal proceedings.

IV. Conclusions and recommendations

30. **The Special Rapporteur emphasizes his intention to develop a constructive dialogue and cooperation with the Government of the Islamic Republic of Iran in order to facilitate the implementation of his mandate. In this regard, the Special Rapporteur welcomes the spirit of engagement conveyed during his first meeting with representatives of the Government. He further emphasizes that a country visit conducted on the basis of unhindered access would be highly important and would enable him to strengthen engagement with the Iranian authorities on human rights. Such a visit would further enable the Special Rapporteur to carry out a detailed assessment of the human rights situation in the country, including through interviews with individuals residing in the country, and would provide significant information for the preparation of a future report.**

31. **In the present report, the Special Rapporteur has highlighted a number of consistently documented issues of concern on the basis of a review of reports of his predecessors, the Secretary-General and the international human rights mechanisms, coupled with a review of reports received from numerous sources and initial discussions with various interlocutors. Those issues include violations of the right to life, in particular the execution of juvenile offenders; of the prohibition of torture and other ill-treatment; of the right to freedom of assembly, opinion and expression; and of the rights of women and girls, as well as those of religious and ethnic minorities, and represent areas in which the Special Rapporteur intends to seek further detailed information.**

32. **On the basis of his initial analysis, the Special Rapporteur has identified a number of further areas that he currently intends to address, including but not limited to violations of economic, social and cultural rights, the situation of human rights defenders, the situation of foreign and dual nationals, the alleged summary executions in 1988, as well as the rights of specific groups, in particular those based on disability, sexual orientation and gender identity.**

33. **The Special Rapporteur reiterates the previous calls made by his predecessor and the Secretary-General that all those arrested for the peaceful exercise of the rights to freedom of assembly and of opinion and expression be released, including those arrested during the protests in December 2017 and January 2018. The Special Rapporteur further calls upon the Government to undertake an independent and transparent investigation into the reported deaths in custody and other incidents leading to alleged violations of rights that took place during and after the protests.**

34. **The Special Rapporteur calls upon the Government to uphold the fundamental human rights of freedom of opinion and expression and to repeal all laws and policies which criminalize or restrict online expression, with online content to be restricted only by independent and impartial judicial decisions.**

35. **The Special Rapporteur expresses his grave concern at the continuing execution of juvenile offenders in the Islamic Republic of Iran and calls upon the**

Government to immediately prohibit all executions of persons charged with offences that they committed when under the age of 18 years. He further recommends that the Government abolish the death penalty in all cases and, pending that measure, introduce a moratorium.

36. **The Special Rapporteur calls upon the Government to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and urges the Government to enact laws prohibiting the punishments of flogging and amputations, as they represent cruel, inhuman or degrading punishments and violate articles 7 and 10 of the International Covenant on Civil and Political Rights.**

37. **The Special Rapporteur calls upon the Government to ratify the Convention on the Elimination of All Forms of Discrimination against Women and to prohibit all forms of discrimination against women, both in law and in practice.**

38. **The Special Rapporteur calls upon the Government to fully respect the rights of religious and ethnic minorities in the Islamic Republic of Iran and to ensure that all those who reside in the country have equal protection before the law, regardless of ethnicity, religion or belief.**

United Nations A/73/399

General Assembly

Distr.: General
27 September 2018

Original: English

Seventy-third session
Agenda item 74 (d)
Promotion and protection of human rights: comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action

Letter dated 20 September 2018 from the Permanent Representative of Austria to the United Nations addressed to the Secretary-General

I have the honour to submit herewith the report, entitled "Vienna + 25: building trust — making human rights a reality for all", of the international conference on the occasion of the twenty-fifth anniversary of the World Conference on Human Rights (see annex).*

I should be grateful if you would circulate the present letter and its annex as a document of the General Assembly, under agenda item 74 (d).

(*Signed*) Jan **Kickert**
Permanent Representative

* The annex is being circulated in the language of submission only.

18-16119 (E) 041018

Please recycle

Annex to the letter dated 20 September 2018 from the Permanent Representative of Austria to the United Nations addressed to the Secretary-General

Vienna+25
Building Trust — Making Human Rights a Reality for All

International Conference on the occasion of the 25th anniversary of the World Conference on Human Rights (Vienna City Hall, 22–23 May 2018)

Outcome document

On the occasion of the 25th anniversary of the Vienna Declaration and Programme of Action (VDPA) adopted at the World Conference on Human Rights (14 to 25 June 1993), the Austrian Federal Ministry for Europe, Integration and Foreign Affairs, in cooperation with the Office of the UN High Commissioner for Human Rights, the City of Vienna and the Ludwig Boltzmann Institute of Human Rights (BIM), organized a high level expert conference in Vienna. The event was co-funded by the Austrian Development Agency.

This document reflects the main messages of the discussions. It has been compiled by the Austrian hosts and includes the recommendations elaborated by the Chairs and Rapporteurs of the Working Groups. The conference programme is annexed. A publication with all conference documents is in preparation and will be published later this year.

INTRODUCTION

The expert conference gathered human rights stakeholders from all world regions, high level representatives of the UN, including special procedures mandate holders and members of treaty bodies, human rights defenders and independent human rights experts from civil society and academia, regional, subregional and national human rights institutions as well as representatives from the local level.

The purpose of the conference was to collect experts' perspectives on global trends, such as digitalization, demographic changes, urbanisation and climate change, and their impact on the human rights agenda of the next decades. The experts developed practical recommendations to encourage states and other stakeholders to pursue further legal, institutional and practical improvements to human rights protection, both domestically and internationally. The conference aimed at making a contribution to a future-oriented discourse on the relevance of human rights, and in doing so, strengthening the voice of human rights activists and defenders who identified the most pressing challenges that human rights are facing right now and highlighted good practices to tackle them.

The conference was opened by Austrian Federal Minister for Europe, Integration and Foreign Affairs Karin Kneissl, UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein and the Mayor of Vienna Michael Häupl as the conference host. The High Level Opening on "Emerging human rights challenges — perspectives from the ground" was chaired by the Director of the EU Fundamental Rights Agency Michael O'Flaherty, and included UNODC Goodwill Ambassador for the Dignity of Survivors of Human Trafficking Nadia Murad, as well as Nigerian human rights lawyer Hauwa Ibrahim, Argentinian lawyer and women's rights activist Susana Chiarotti, and the Austrian data protection activist Max Schrems. In their

addresses, they discussed burning human rights challenges such as armed conflict and internal displacement, violent extremism, women's rights and gender equality, data protection and privacy as well as the work on the local level including the role of cities and urban development. They noted that in spite of progress in some areas of human rights, there had been retrogression in other areas in recent years and challenges persisted. The human rights activists called upon the international community to stand by their achievements and defend human rights in the face of mistrust, indifference, persisting conflict and increasing isolationism.

The ensuing discussions at expert level were conducted in two Working Groups focusing on the topics "Human Rights and Security" and "Promotion of Equality in our Societies". Each Working Group was composed of approximately 45 experts. Working Group 1 on "Human Rights and Security" was chaired by Agnes Callamard, UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. Working Group 2 on "Promotion of Equality in our Societies" was chaired by Manfred Nowak, Director of the Ludwig Boltzmann Institute of Human Rights. In preparation of the conference, participants had received thematic outline papers for the two Working Groups as a basis for discussion. The thematic outline papers were authored by Gerrit Zach (Working Group 1) and Karin Lukas (Working Group 2), both Senior Researchers at the Ludwig Boltzmann Institute of Human Rights. During the Working Group sessions, the experts shared experiences from their respective fields of expertise and jointly formulated a set of recommendations addressed to relevant stakeholders. Vitit Muntarbhorn, Professor of Law at Chulalongkorn University Bangkok, and Heike Alefsen, Senior Human Rights Adviser at the Office of the UN Resident Coordinator in Bangladesh, served as Rapporteurs and presented the recommendations of their respective Working Groups to the plenary during the closing session of the conference.

FOLLOW-UP

The conference was closed by Austrian Foreign Minister Karin Kneissl, after a High Level Concluding Panel on "The way forward — views of key institutional stakeholders". Chaired by Christian Strohal, Special Representative for the Vienna World Conference on Human Rights 1993, the panel gathered institutional stakeholders such as Fabrizio Hochschild, UN Assistant Secretary-General for Strategic Coordination, Hilal Elver, UN Special Rapporteur on the Right to Food, Bandana Rana, member of the UN Committee on the Elimination of Discrimination against Women, Diego García-Sayán, UN Special Rapporteur on the Independence of Judges and Lawyers, and Gauri van Gulik, Amnesty International Regional Director for Europe. In their discussion, they recognised the progress made since the adoption of the Vienna Declaration and Programme of Action, including in institutional advances, accountability, global awareness for human rights and the strength of the global human rights movement today. In response to emerging challenges they highlighted the need to build new alliances, to show contextual flexibility and to create participatory and diverse movements. They encouraged spreading the message that human rights serve as a source of trust and a means to bring humanity together by transferring global action to the local level and ensuring better and more positive communication about human rights.

Participating experts agreed that the conference had generated renewed momentum to defend human rights worldwide. There was broad support for joining efforts to translate this momentum into appropriate follow-up and concrete activities by all participants. In her concluding remarks, Austrian Foreign Minister Karin Kneissl underlined Austria's commitment to bringing the recommendations from the conference to the attention of the Human Rights Council and the General Assembly of the UN and encouraged participants to pursue them in their respective fields of

activity. The conference organizers will publish a compilation of all conference documents to facilitate the dissemination of the results.

RECOMMENDATIONS

The following recommendations emerged from the discussions among participating experts regarding the two major themes of the conference:

WORKING GROUP I: HUMAN RIGHTS AND SECURITY

Overarching recommendations:

Security, human rights, dignity, equality, democracy, peace and sustainable development are interdependent and mutually reinforcing.

This linkage calls for a holistic and systemic understanding of the notion of security and its multifaceted nature, including the interrelationship between different actors, taking into account the Sustainable Development Goals (SDGs). While state security and national security are often invoked at the interface with human rights, there are other dimensions of security to be borne in mind, including international security, human security, social security, cybersecurity, food security and security from the state. Security is thus interlinked with the whole range of civil, political, economic, social and cultural rights. Human rights must inform the notion of security, particularly to set the parameters of what is permissible internationally.

While some human rights can be subject to limitations based on national security, public safety and public order, the latter need to fulfil the principles of legality, necessity, proportionality, non-discrimination and human rights universality. Moreover, while insecurity is generally perceived as based on threats, great care is needed since these threats might be actual, potential, or merely fictitious and used as a pretext to erode human rights. Thus, more effort should be made to prevent threat(s) and inform society about fictitious stereotypes.

This requires a discussion based on facts and evidence-based research, which needs to be inclusive, participatory and grounded at the local level, particularly to reflect the realities of those affected by the claims of security policies. This demands a proactive approach to reframe the security narrative which is sensitive to the needs of vulnerable and marginalised groups, particularly promoting and involving a strong and vibrant civil society.

Specific Recommendations:

1. Recommendations to States

Laws and policies

1. In their law and policy making, states should base themselves on a broad understanding of security, including social factors, inequality and marginalisation.

2. Ensure space for civil society to operate freely and to contribute expertise to the policy process. This includes an adequate legal framework to operate, freedom of expression for all, participatory procedures, and access to potential victims of human rights violations, while ensuring that government representatives, policy makers and relevant stakeholders engage in dialogue with citizens and those who have expertise to contribute.

3. Review counter-terrorism laws and national security related policies, including those related to cybersecurity, so as to ensure their compliance with international human rights standards.

4. Promulgate laws to implement international human rights standards, including those regarding action to counter public incitement to hatred, discrimination and violence, in full respect of freedom of expression standards online and offline.

5. Adopt a systematic approach to the relationship between security and human rights, bearing in mind that while some human rights are non-derogable, others are of a derogable nature but the limitations must be in accordance with the principles of legality, necessity, proportionality and non-discrimination.

6. Carry out an upstream assessment of all security-related legislative proposals that engage with data interoperability regarding their impact on fundamental rights, which has to be underpinned by the principles of legality, necessity, proportionality and non-discrimination.

Programmes and practices

7. Underline the need to protect the rights of vulnerable groups and the rights of women effectively against the impact of security related measures.

8. Elaborate concrete measures for the meaningful participation of women at all levels and ensure greater empowerment of women in the security, peace and human rights discourse, bearing in mind United Nations Security Council Resolution (UNSCR) 1325 and subsequent resolutions.

9. Ensure adequate frameworks, mechanisms and tools for systemic and meaningful engagement of youth in security related policy and decision-making and in conflict prevention and resolution complementary to and in conformity with UNSCR 2250.

10. Support intercultural programmes for children and youth from a young age so as to nurture tolerance, cross-cultural understanding and mutual respect, bearing in mind that prevention of racism, xenophobia, intolerance (including religious intolerance) and violent extremism depends upon incentives for children and youth to follow the path to peace with a mindset and skills to shun violence and discrimination.

11. Build trust with civil society actors by respecting the space for human rights defenders, while protecting the rights of human rights defenders and civil society actors to advocate more effective promotion and protection of human rights at the interface with security concerns.

Mechanisms and personnel

12. Establish efficient and independent human rights oversight mechanisms, such as National Human Rights Institutions (NHRIs), National Prevention Mechanisms (NPMs), data protection authorities, parliamentarian oversight bodies, etc., while at the same time making sure that this does not negatively impact the important work of independent civil society actors (e.g. access to places of detention, information, etc.), and promote a culture based on human rights.

13. Build a culture of human rights in law enforcement and security related organizations and integrate human rights personnel/units in law enforcement and security related bodies so as to ensure sustained commitment to the complementarity between national security concerns and respect for human rights.

Resources

14. Ensure sustainable funding, make resources available and utilise these transparently, particularly by shifting from the military sector to the social sector so as to address the environment behind marginalisation, poverty, inequality and discrimination.

15. Promote national and international funding for civil society and research without restrictions, and provide funding for independent work in a transparent manner, without undue interference.

Information and monitoring

16. Undertake periodic human rights impact assessments in regard to the consequences of security measures, including on gender-based violence and other forms of violence and discrimination (interlinked with the right to digital privacy), with effective follow-up action in the pursuit of justice.

17. Collect and analyse evidence to understand how communities, vulnerable groups, in particular national minorities, experience insecurity and the impact of security measures, and to tailor human rights related communications accordingly.

18. Guarantee the right to information when personal data are collected, including on all aspects of the data processing, as well as on procedures for accessing own personal data stored, and to have inaccurate data corrected or deleted as laid down by law.

19. Adopt effective medium(s) for information dissemination, particularly ensuring a secure and enabling environment where women and vulnerable groups can exercise the right to information and access thereto.

Education and capacity building

20. Strengthen human rights education, training and capacity building, including curriculum development based on international standards bearing in mind local realities, targeted to a variety of groups, including law enforcers/security personnel and related actors as well as judiciary.

21. Support training and education on data protection and cybersecurity, particularly for children and youth from a young age, differentiating between age groups and their particular needs.

22. Build a bottom-up and top-down system of law enforcers and security personnel with effective screening, adequate training and education, performance monitoring, incentives for human rights sensitive implementation, and measures for accountability in the case of violations.

23. Establish human rights sensitive police "services" (rather than police forces) with human rights units and focal points so as to promote professionalisation and sustained commitment to comply with human rights standards.

24. Ensure and support initiatives to improve media literacy.

Accountability and remedies

25. Ensure procedural safeguards for suspects and persons accused in criminal proceedings.

26. Eliminate impunity for state agents who violate human rights, including by abolishing laws and/or eradicating policies that justify torture and other forms of ill-treatment, and ensure individual accountability.

27. Set up independent oversight bodies to investigate allegations against law enforcement and security personnel, with adequate resources and skills and without the requirement of prior authorisation before a state official can be prosecuted, operating transparently and publicising their proceedings and results.

28. Encourage the development of simplified procedures to access stored personal data and to have inaccurate data corrected or deleted as laid down by law.

Participation and inclusion

29. Broaden the space for civil society participation, ensuring space for gender responsiveness and the interests of minorities in the spirit of socioeconomic and cultural inclusion and democratic space for mobilisation and collective action.

30. Increase participation and inclusion of under-represented groups (including conflict-affected people).

31. Foster a rights-based and evidence-based discussion on security, refraining from criminalisation and stigmatisation of entire groups (e.g. refugees, internally displaced persons (IDPs), migrants, former combatants, conflict-affected children, etc.) and adequately responding to fears among the population including action to counter violent extremism (CVE).

32. Promote leadership from the local to the national and international levels that is respectful of pluralism and human diversity, as part of a local/global culture of non-violence and non-discrimination.

33. Centre policing strategies on community-based, human rights-oriented partnerships, balancing intelligence-led policing with community-based policing that is open and transparent, accountable, impartial, representative and effective in preventing and detecting crime.

34. Balance community-based policing and national security priorities with a view to creating trust between police and communities.

II. Recommendations to cities and local governments

35. Expand the network of human rights cities and local governments, bearing in mind the significant spread of urbanisation while not neglecting also the livelihood and protection of rural people. Invest in social and community work, also on public premises and in public space to promote urban competence and conflict resolution when dealing with marginalised population.

36. Ensure that urban security policies and programmes are based on a human rights approach, especially as emerging technologies such as special face recognition and intelligence software become available to police and local authorities.

37. Foster social inclusion and protection while implementing anti-discrimination and equality related measures effectively, and ensure that funding is not used for activities which may lead to incitement of hatred.

38. Encourage cities and local governments to adopt human rights education programmes, particularly addressing young people of different communities as part of action for cross-cultural understanding.

39. Implement effective communication strategies so as to prevent violence and discrimination, protect human rights effectively and ensure accountability of those responsible as well as providing remedies for victims and survivors of human rights violations.

40. Identify and/or establish independent institutions, such as local anti-discrimination offices to respond to human security, addressing local conflicts as well as to receive complaints with a view to redress.

41. Work with and promote active participation of civil society organizations and gender sensitive rights-based monitoring at the local level by means of civil society actors, including through appropriate and accessible technology to assist the work of local monitors.

III. Recommendations to the UN

42. Support the creation of early warning systems using the Human Rights Up Front Initiative, by taking into account social strategies in place and gender-based, religion and race sensitive indicators to address extremism and conflicts revival, complemented by adequate resourcing.

43. Support the UN Security Council and its committees to have consistent dialogue on human rights and to undertake human rights assessment of security-related resolutions, statements and action.

44. Urge the UN Human Rights Council through the Universal Periodic Review (UPR) and special procedures, to strengthen the monitoring of human rights violations committed in the name of national security and the negative consequences of counter-terrorism and related actions, including through fact finding, with a view to providing adequate remedies.

45. Promote accession to human rights treaties and foster synergies between treaty body mechanisms.

46. Reaffirm commitment to and full application of the human rights-based approach in development cooperation, in particular in the fields of conflict prevention, peace and security and strengthen the monitoring of its application and ensure appropriate funding.

47. Call upon the UN Department of Peacekeeping Operations to build the capacity of police, judicial and security sector with rule of law indicators leading to follow-up action.

48. Implement effectively the SDGs, particularly SDG 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels), which is cross-cutting for human rights and development, peace and security.

IV. Recommendations to regional organizations

49. Maintain and reinforce the increasing attention from some regional organizations such as the European Union (EU), the Council of Europe (CoE) and Organization for Security and Cooperation in Europe (OSCE) to tackle the root causes behind terrorism and violent extremism as well as encroachments by securitisation and digitisation on the right to privacy, human rights and freedoms.

V. Recommendations to private corporate actors

50. Actively engage leadership in the business and technological sector as key partners in protecting human rights, and call upon digital corporate actors to respect the right to access the internet and the right to digital privacy.

51. Encourage digital actors to establish meaningful sector-wide self-regulation with independent multi-stakeholder bodies responsible for assessment and monitoring, with an appeals mechanism, an independent process and related criteria.

52. Ensure that "content moderation" staff are properly trained and resourced and that they have the necessary qualifications to review and determine whether content violates human rights.

53. Invest in research and in algorithms that respect and protect human rights and do not result in discriminatory profiling, and ensure compliance by increased scrutiny and oversight on how algorithms are built, by identifying biases in algorithms, by ensuring the quality of the data used and by increasing transparency in the use of algorithms.

54. Urge private corporate actors, especially those in the extractives industry, to adhere to international human rights standards and take measures to prevent and mitigate human rights abuses that could arise from their activities.

55. Call upon digital corporate actors to actively prevent the use and distribution of online child abuse and sexual exploitation materials on their platforms.

VI. Recommendations to the media

56. Strengthen public interest journalism, good governance in media and a public information system rooted in ethics and transparency.

57. Foster attachment inside journalism to core values — accuracy, independence, impartiality, humanity, transparency and accountability — eliminating hate-speech, building respect for pluralism, holding power bearers to account, and challenging abuse of human rights.

58. Ensure that media and journalism are trustworthy, intolerant of conflicts of interest, transparent about their work and always ready to listen to the complaints and views of others.

59. Strengthen self-regulation with independent oversight authorities to improve transparency, accountability and quality of journalism at all levels.

60. Improve solidarity and cooperation between journalists, media and human rights activists, for instance by pursuing the investigations initiated by eliminated journalists before they were murdered or imprisoned.

61. Develop and promote a human rights glossary for media workers, accessible in several languages, and provide guidelines for responsibility in framing narratives on terrorism and migration.

VII. Recommendations to Civil Society Organizations (CSOs)

62. In the relationship with increasingly digitised societies, broaden partnerships to promote human rights more effectively and in a gender sensitive manner. The partners include civic technology actors (who promote technology use for the common good) and communication experts from other fields, e.g. marketers, neuropsychologists.

63. Act as a watchdog of security policies and advocate the integration of CSOs in independent oversight bodies, including of the police, security forces, etc.

VIII. Recommendations to other entities

64. Call upon religious leaders to implement the Faith for Rights Declaration and Plan of Action and the Rabat Plan of Action in regard to action against incitement to hatred.

65. Encourage judges and the judicial sector more generally to question the legality of governments' security policies and interventions, on the basis of domestic or international law (namely, to turn away from the traditional "political doctrine" approach).

Working Group 1
Chairperson: Agnes Callamard
Rapporteur: Vitit Muntarbhorn
Team: Joana Daniel-Wrabetz and Philipp Wassermann
May 2018

WORKING GROUP 2: PROMOTION OF EQUALITY IN OUR SOCIETIES

The protection and promotion of equality has been a key element of efforts to achieve the implementation of human rights since the adoption of the Universal Declaration of Human Rights in 1948, and a focus on equality and non-discrimination was reinforced in the 1993 Vienna Declaration and Programme for Action.

Since then, major cultural, economic, political, social and other changes and challenges have occurred through the effects of, inter alia, globalisation, demographic developments, migration, climate change, and new communication technologies. Political decision-makers and other stakeholders continue to be confronted with inequalities as a persistent and growing phenomenon.

This Working Group discussed concepts, aspects and evolving concerns related to equality and how to address them through human rights compliant action. It proposed some measures to ensure that the human rights principles of equality and non-discrimination are integrated in responses to structural as well as emerging issues.

In this context, participants reviewed the role of global constituencies and new actors or those that are taking on new roles as duty-bearers for human rights protection and promotion, including local governments, notably cities, and private actors, notably businesses.

In keeping with the concept note for the expert conference, the discussion was guided, inter alia, by the following questions:

- What are the main reasons and factors for (in-)equality in our societies? What role do the global financial system, financial transfers and phenomena such as corruption play in aggravating inequalities? In which areas did we make substantial progress, and what can we learn from these examples? What is the contribution of the Sustainable Development Goals (SDGs) in this regard?
- Are the concepts of "equality/anti-/non-discrimination" and "vulnerability/positive discrimination" still helpful to counter inequalities in society or should we develop new approaches? Are there specific grounds of discrimination that we will have to examine more closely, such as age and inter-generational issues?
- How can we best integrate a human rights-based approach to poverty prevention and reduction policies?
- What do the Sustainable Development Goals mean on a local level and how can they be integrated in city strategies for sustainable urban development?
- What is the impact of new technologies, for instance on labour rights, and how can we address potentially negative consequences for equality?
- What are the benefits of an equal society for the general population? In what ways do we have to adapt our communication strategies to better pass the message about equality to all people? How can we reach out to people who feel disenfranchised by globalisation?

Summary of discussion and recommendations to policy makers and the human rights community:

1. Concept and approaches

It was noted that protection and promotion of equality in societies is a very broad topic, hence the starting point for the discussion was economic inequality, but it soon became clear that other aspects of inequality, such as civic, cultural, social and political, must be considered. While the alarming increase in economic inequality

over the last 25 years demanded particular attention from the human rights community, it was important to address how economic disparities intersect with social and cultural inequalities on grounds such as gender, ethnicity, sexual orientation, disability and age, compounding discrimination and undermining substantive equality. In this context, it was considered important to also address intersectional forms of discrimination and furthermore the impact of climate change on equality.

While there has been significant progress in equality before the law since the 18th century, and more recently, progress has been made with protection from discrimination relating to prohibited grounds, such as sex/gender, race, ethnicity, disability, age, social status, religion, disability and others, these types of discrimination have neither been comprehensively and holistically addressed nor completely eliminated in any country.

It was recalled that Article 26 of the International Covenant on Civil and Political Rights (ICCPR) of 1966 requires action to protect people against discrimination by private actors and to ensure equal protection of the law. This principle is reinforced by the International Covenant on Economic, Social and Cultural Rights (ICESCR). Where societies are becoming increasingly unequal in social, economic or other terms, this would imply that the state has a positive obligation to combat such rising inequalities and exclusion, ensuring no retrogression.

In the discussion on the concept of equality, it was noted that equality is considered as a cornerstone of the right to development, which was reaffirmed in 1993 with the Vienna Declaration and Programme of Action. It was argued that the common provisions on equality and non-discrimination in the international human rights treaties implied that equality and non-discrimination as stipulated in the Universal Declaration of Human Rights had attained the status of customary international law. Equality and non-discrimination constitute also one of the six major principles contained in the human rights-based approach to development as recognised in the UN system's common understanding.

However, while it was recalled that the international human rights treaties, the UN 2030 Agenda for Sustainable Development and the UN Secretary-General are prioritising action against inequalities, there was concern that political and societal actors in many countries had lost sight of the value of equality, including as a public good, that the egalitarian focus of the state had been abandoned and the social contract had been delegitimised. Rising inequality has led to a lack of trust in others and in society whereas such trust had been the original idea of the social contract.

It was also suggested that actors were often addressing equality through specific, group-focused lenses that created the impression of equality being only about and for minorities whereas it should be a majority concern and an overarching societal goal.

Power and structural and institutional discrimination and inequality

Entrenched unfair, unequal and discriminatory institutional power structures were considered a fundamental concern, reflected, inter alia, in a lack of the right to participation in society, as well as of the rights to freedom of expression, information, association and assembly. At the same time, economic inequality cannot be separated from power. Addressing economic inequalities also requires looking at the fundamental power structures and considering which groups are and which groups are not able to fully participate in social and economic development and decision-making. While there is a need to focus on income inequality, simultaneously, there is an urgent need to address horizontal or status inequality amongst and between different groups. Access to equitable opportunities, for example, is frequently defined by existing social patterns of exclusion and prejudice (such as on grounds of race, gender, disability, age etc.), and therefore addressing structural and entrenched forms

of discrimination is also vital in promoting income equality. In fact, status equality is a precondition to achieving substantive economic equality.

The right to development and the notion of empowerment mean little if structural, institutional inequalities are perpetuated, and when related corruption impacts on development. Powerlessness, or a sense of powerlessness, is a major concern that needs to be addressed in the context of poverty alleviation policies.

While it was considered important to identify vulnerabilities to ascertain how they contribute to inequality and discrimination and to ensure that targeted action can be taken, the notion of "vulnerable groups" was seen as disempowering for some, such as women, and in some contexts, as potentially further victimising those who are already vulnerable. It was instead suggested to use language that does not equate a person with a given vulnerability and that ensures an appropriate focus on the existing agency of actors and their empowerment.

Recommendations

1. Build trust, refocus on and communicate equality as a goal for all of society, and re-legitimise and re-define the social contract.

2. Affirm states' obligations to eliminate inequality and discrimination as part of their human rights commitments.

3. Work towards expanding the concept of prohibited grounds for discrimination to include the increasing of inequality, and consider the latter as a non-permissible manifestation of retrogression of rights.

4. Ensure that policies and programmes that target inequalities contribute to empowerment and address entrenched, unsustainable, unfair and unequal power structures.

5. Use language such as "persons in situations of vulnerability" instead of "vulnerable groups", as appropriate in the given context.

II. Global trends and recent policy developments

Growing inequalities as human rights violations

Inequalities were considered as cause, catalyst as well as symptom of other human rights violations, and economic inequality as linked to many other types of inequalities and social tension, corruption, and radicalisation. It was highlighted that inequality is largely due to discriminatory legislation, policies and practices, and globalisation driven by neoliberalism.

Economic growth and equality

Economic growth may lead to reduction of poverty, which is an important goal. Some noted that there had been economic growth due to large scale poverty reduction in some countries and consequently inequalities between countries had been reduced. Yet, others highlighted lack of differentiation and a need to ensure disaggregation, and that by many accounts inequalities between countries were actually rising.

Another trend, on the other hand, is visible and concerning, namely growing inequalities within countries. In this respect, it was noted that a key issue in the last 30 years has been a major escalation in the gap between the rich and the poor, with unequal wealth concentration: 8 people own as much as 50% of the world's

population do, and the top 1% own more than all others.[1] While a new middle class had emerged in some countries, there was also a trend towards the decimation of the middle class in others. It was suggested that the gap escalation has been perpetuated by socioeconomic policies skewed towards protecting the rights of the few in the elites. Entrenched, institutionalised inequality continues to exist in economic structures. Economic growth alone does not decrease economic inequality if it is not matched by policies that support sustainable economic redistribution and social protection. As the example of some countries shows, high economic growth that benefits some parts of the population and not others may lead to significant increase in economic and social inequalities as well as continued lack of empowerment.

If inequality reaches a certain level, it leads to further human rights violations, with extreme economic inequality not just a cause but also a consequence. Drivers in this regard are transnational corporations and various groups of actors in the global economy where the recent proliferation of actors makes finding appropriate policies and programmes more challenging. Another driver is the global financial system with policy determinants such as fiscal austerity, freezes on public spending, and regressive tax reforms benefiting those who are already rich.

It was argued that some economic growth policies, through their focus on unsustainable large-scale development projects, had in fact increased the risk of or led to actual human rights violations, as manifested in evictions, land grabbing, forced migration, destruction of the natural environment, as well as torture and ill-treatment, extra-judicial executions, disappearances and arbitrary detention. This has led to new vulnerabilities and inequalities.

A major new UN/World Bank conflict prevention study, 'Pathways to Peace', concludes that exclusion and discrimination lead to conflict, and that political, economic, ethnic, or religious inequality fuels violence and populism. Some participants in the Working Group considered the effect of inequality "toxic" in the sense that inequality leads to exclusion that often finds its expression in violent, xenophobic, racist or populist movements. Populist governments play with, manipulate and exacerbate people's perceptions of discrimination, and these governments feed on inequality. A perception of disenfranchisement and inequality has been expressed in some democracies by groups who had previously been among the privileged and not significantly affected by inequalities. Far from being disenfranchised, this new group of the "poor" is however now playing a major role in politics and contributing to the trend towards marginalisation and further social, economic and political polarisation that would ultimately only deepen inequalities.

Recommendations

6. Recognise extreme economic inequality as the product of policies which entail multiple, serious violations of various human rights, including the right to equal protection of the law, and economic, social and cultural rights.

7. Analyse and address structural inequality and discrimination, including unequal access to power structures and decision-making, acknowledge its scale and recognise its impact.

8. Reaffirm that economic growth must be sustainably focused on contributing to equality and following a human rights-based approach with a focus on access to health, education, housing and other economic, social and cultural rights but also civil and political rights, including equal access to justice and political participation.

[1] Oxfam Briefing Paper (2017) An Economy for the 99%. https://policy-practice.oxfam.org.uk/publications/an-economy-for-the-99-its-time-to-build-a-human-economy-that-benefits-everyone-620170 [accessed 22.06.2018]

9. Undertake quality root cause analysis and research on grounds for inequality and exclusion and affected people who are or consider themselves to be treated unequally, to be disenfranchised and discriminated against, in order to better target policies aimed at rooting out stereotypes or societal norms supporting inequalities and discrimination.

10. Employ a human rights-based approach to climate change by respecting, protecting and fulfilling respective human rights obligations.

Gender equality, women's and girls' rights and the implementation gap

An equally concerning trend has been regression in gender equality since the millennium. There is an implementation gap in relation to equality overall, but notably gender equality: Where it exists in law, the formal right to equality and a gender equality-based policy approach are frequently not implemented in practice and often present greater challenges and resource requirements than overcoming the initial hurdles to create the legal or policy foundation in the first place. For individuals, especially for women, substantive equality is often not a reality, also due to internalised traditional approaches to gender equality where not only men, but also women are unaware of or indifferent to their right to equality, or have no space to claim and realise it.

Recommendations

11. Emphasise the universality of women's rights as an integral and indispensable part of all human rights.

12. Focus policies and programmes on effective promotion of women's and girls' right to equality, including through affirmative action.

Age-based discrimination and generational inequality

Young people and older persons face specific barriers in accessing their rights, specific human rights violations, and structural and institutional discrimination on the basis of their age. These are both a cause and a consequence of facing economic inequality, with youth or older persons being the age groups most at risk of poverty and social exclusion in many countries. This is also linked to power relations in society. While there has recently been a focus on the role of youth in the 2030 Agenda for Sustainable Development or in discussions on peace and security policies, with youth recognised as peace builders, and on older persons through new international human rights mechanisms, the conceptual shift towards greater recognition of young people and older persons as rights-holders should be strengthened.

Recommendation

13. Recognise/focus on young people and older persons, and other groups more traditionally viewed as 'beneficiaries', as rights-holders and take steps to address their exclusion, discrimination and the barriers they face in accessing their rights.

New human rights developments and policy frameworks: the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs)

The most important development has been the adoption of the 2030 Agenda for Sustainable Development in 2015 and its 17 Sustainable Development Goals, which are often described as strongly grounded in international human rights standards. The Working Group discussed the relationship between human rights and the SDGs almost three years after the adoption of the Agenda.

It was noted that the human rights community had achieved much in helping to align the 2030 Agenda and SDGs with human rights, notably through the expansion of previous goals or the introduction of new ones to encompass broader notions of equality/inequality and non-discrimination, such as SDG 5 on gender quality (broader than the pertinent former Millennium Development Goal 3) and the new SDGs 10 "Reduce inequality within and among countries" and 16 "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels". It was noted that the implementation of the SDGs may be used for strategic engagement with governments that reluctantly engage on human rights. SDG 10 in particular was considered an entry point for dialogue with those with whom, from a human rights perspective, dialogue might be less conducive. Yet SDG 10, the goal that tackles vested interests directly, experiences limited uptake by major political or development actors.

While the 2030 Agenda and its SDGs are the single most important development policy document of the current millennium so far and dominate as the defining benchmarks all development planning, policy dialogue, programming and financing bilaterally and multilaterally, at national, regional and international levels, it was recalled that they are a policy framework and thus "soft law", whereas the international human rights treaties are legally binding standards. Some participants were concerned that while the SDGs are more influenced by human rights principles than the Millennium Development Goals and offer entry points, the often vague formulation of targets and indicators does not sufficiently mirror the ambition of the goals or the universality of international human rights standards.

It was stressed that human rights offer to the SDGs a framework of binding legal obligations that does not exist as such in the 2030 Agenda, and human rights standards on non-discrimination and substantive equality provide a detailed normative framework to guide implementation of the cross-cutting SDG commitments to "reduce inequality within and between countries" and to "leave no one behind". At the same time, it was pointed out that it is important to use clear human rights language in a principled approach, and to not replace human rights language with development/SDG-related language. It was also recalled that follow-up to outcomes/recommendations of the international human rights mechanisms should be pursued as an equal and integrated priority of the national development agenda.

Recommendations

14. Use the 2030 Agenda, the implementation of the SDGs and the commitment to "leave no one behind" as an entry point for discussions with governments on human rights principles and standards, in view of states' commitment to Agenda 2030 in support of the implementation of human rights. Concretely, base each goal and target of the 2030 development agenda on related human rights, and link SDG indicators to human rights indicators.

15. Use SDGs, the Addis Ababa Action Agenda, the Paris Agreement on Climate Change and other development-related frameworks as a vehicle for human rights accountability, not just development accountability, including through the Voluntary National Reviews (VNRs) and new Voluntary Local Reviews (VLRs).

16. Seize the opportunity for a review of the status of national, regional and global inequalities in the context of Goals 8 (decent work and economic growth), 10 (reduced inequality within and among countries) and 16 (peaceful and inclusive societies), being considered during the next VNR in 2019, and bring in elements of Goal 5 (gender equality).

17. While framing the action in support of SDG implementation as based on human rights and the "leave no one behind" principle, ensure that clear human rights language is used to illustrate principles, norms and standards.

18. While emphasising that equality and non-discrimination are cross-cutting objectives in the SDG framework, emphasise the key role played by peaceful and inclusive societies in support of all other goals and advocate for annual review of SDG 16 at each VNR as of 2020, when VNR practice will be reviewed.

19. Integrate Universal Periodic Review (UPR), Treaty Body and Special Procedures recommendations into SDG planning, implementation and monitoring, including any national SDG action plans, UN (Sustainable) Development Assistance Frameworks, VNRs and other such processes at national, regional and international levels.

III. Holistic, comprehensive policies and programmes based and focused on human rights protection and promotion

Good governance, social protection, fair labour policies

It was suggested that committing to a new agenda for achieving equality rooted in human rights requires, at national and, where applicable, regional and global levels, good governance and fair social policies, labour standards, social protection floors with guaranteed access to health, education, housing and other social services. These can be the skeleton of the framework for a new human rights-focused agenda to tackle inequalities, which features reforms of social, economic/financial and where necessary political systems, and redistribution to overcome inequalities. Good practices were seen in some countries in social spending, labour protection, social protection, and increasing progressive taxation. Other good practices were seen in the human rights-based approach to social protection developed by the former Special Rapporteur on extreme poverty.

Recommendations:

20. Support policies and programmes aligned with human rights standards that challenge discriminatory, asymmetric power relations, empower disadvantaged and discriminated people and groups and encourage redistributive justice and wealth/economic benefit redistribution, including through fiscal and taxation policies.

21. Ensure good governance and the rule of law, eliminate corruption in government and the economy, and ensure transparency in procurement and other public processes.

22. Ensure fair social and labour market policies focused on elimination of inequalities and discrimination.

23. Adopt and reinforce social protection programmes to fulfil the right to social security and to an adequate standard of living for all, without discrimination, in line with recent international commitments to ensure social protection floors.

24. Ensure that labour market policies are aimed at fulfilling the right to decent work, ensuring rights of freedom of association and to collective bargaining, implementing wage protections and ensuring stringent labour standards in the workplace, addressing wages and labour conditions in the informal as well as formal sector.

25. Ensure that policies and programmes are gender-sensitive and, for instance, consider women's disproportionate unpaid care work in the home and community. Create temporary special measures for women as necessary, e.g. to reduce the gender pay gap, reach women's equal participation in political decision-making, shore up social protection for the many women in the informal economy.

Participation, civic space and human rights defenders

Participation is a vital element of equality. Studies have shown that many poor, rural, illiterate people measure poverty and equality not primarily by economic indicators for the affected persons, but that people describe themselves as poor because they lack participation and voice.

In recent years, many laws and policies have been adopted and action taken to constrain civil society and more broadly, civic space — ranging from laws directly suppressing freedoms of expression, assembly, association, information and participation to laws that affect the economic livelihoods of organizations and individuals. An even more concerning trend shows in serious human rights violations in a growing number of countries, consisting of alleged extrajudicial executions, disappearances and arbitrary arrests, accompanied by a climate of fear and impunity of the security forces who were mostly behind those developments.

It was noted that there are major challenges in the way in which SDG processes have so far been implemented. There has been a lack of inclusive and transparent national processes. Gap analyses and human rights impact assessments must be taken into consideration. There have also been long-standing concerns relating to challenges due to lack of participation in programmes by the International Financial Institutions (World Bank and International Monetary Fund) and regional institutions (e.g. the Asian Development Bank) as well as by the UN. Programmes relating to the principle of free, prior and informed consent, especially by indigenous communities, must be strengthened and relaunched. New grievance and complaints mechanisms introduced over the past years by the UN should be used.

Recommendations

26. Ensure support for the role of, and support to, civil society as critical actors in addressing inequalities, notably human rights defenders, including development actors and environmental defenders.

27. Provide strong protection measures for human rights defenders, especially against serious human rights violations such as extrajudicial executions, disappearances, arbitrary arrests, torture and harassment.

28. Ensure regular, increased inclusion of and support to civil society in national SDG planning, monitoring and implementation processes to ensure an equality focus and better monitoring.

29. Ensure the application of the United Nations "Declaration on the right of individuals, groups of power in society to promote and protect universally recognised human rights and fundamental freedoms" of December 9, 1998, commonly known as the Declaration on Human Rights Defenders (HRDs), and related guidelines of the UN, EU and other organizations. Use the 20th anniversary of the Declaration to highlight the important role of HRDs in contributing to equality.

Education

It was noted that equality was severely curtailed for 800 million illiterate adults, two thirds of whom are women. This ratio has remained unchanged for the last 20 years.[2] Education and skills levels are closely related to inequality, thus it is essential to invest in education at all levels. In the context of technical and vocational education and new technological developments, demands are created for different skill sets and should be anticipated to ensure that no one is left behind in the future.

[2] United Nations Statistics Division (2015): The World's Women. https://unstats.un.org/unsd/gender/chapter3/chapter3.html [accessed 22.06.2018]

Industries that are moving towards improved technology can be incentivised and/or required to develop skills.

Recommendations

30. Pursue relevant, quality and equitable education policies, focusing in particular on delivering outcomes for women. Education should focus first and foremost on personal development and supporting active participation in society, while also supporting learners in preparing for new emerging labour markets and the changing nature of work.

31. Make human rights education available for everyone in society, not just in universities, to empower people as rights-holders to understand and claim their human rights, and states as duty-bearers to protect rights and address the impact of inequalities.

32. Ensure that political leadership communicates the value of equality and inclusive participation, and continuously targets human rights education at officials and their contractors who are responsible for providing public services.

33. Ensure human rights education for women and girls in particular, and adapt tools, including new textbooks that highlight equality. Arguments for education for women can be made on the basis of local religious and cultural concepts (e.g. education is a right in Islam); in order to achieve this, language needs to be culturally sensitive while upholding universal human rights principles.

Youth and age discrimination

The impact of economic inequalities on youth is a major issue. Public austerity policies do not favour young people, and young people are also disproportionately impacted by austerity measures, leading to their being at greatest risk of poverty and social exclusion. This is both a cause and a consequence of young people facing barriers in accessing their rights on the basis of their age. Young people face violations of their right to fair wages and equal remuneration for work of equal value: in nine European countries, there are youth minimum wages that are lower than the standard minimum wage. Young people face barriers in accessing their right to work and their right to just and favourable conditions of work: youth unemployment levels are more than double the general unemployment rate in many countries and young people are overrepresented in non-standard and precarious forms of work. Young people face age-based barriers for accessing social protection, a violation of their right to social security. Access to affordable housing is curtailed, and there is political and civil rights discrimination due to laws regulating minimum age requirements for running for office at 25 or becoming president at 40. Minimum age requirements for running for parliamentary office that are higher than the voting age are present in a majority of countries around the world. Young persons with disabilities, young women, young people from ethnic minorities etc. are encountering multiple and intersecting discriminations.

Recommendation

34. Ensure a focus on young people, their access to rights and their empowerment in all policies and programming, in support of equality.

Sports

It was suggested that diverse and innovative tools and mechanisms should be used to promote equality and human rights in general. One of these tools could be sports as a way to foster inclusion, establish and broaden social networks across

different classes and groups, teach values, fundamental rights such as fairness and freedom, and empower women and youth.

Recommendation

35. Use sports as an effective means of promoting fundamental norms and values such as fairness, equality, respect, responsibility and non-discrimination.

New technologies

It was noted that the approach to tackling inequality and discrimination has shifted to expand to issues such as new technologies, both as opportunities and as threats to equality. There is digital exclusion and inequality due to a divide between parts of the world having access to digital technologies and the other parts lacking this access.

New types of discrimination, such as "algorithmic" discrimination by Artificial Intelligence (AI) was noted, e.g. an algorithm used by US courts to predict recidivism likelihood was found to discriminate against black offenders. It is predicted that AI will replace humans in the labour market and take over many jobs, not just manual labour or work in factories, but clerical workers, lawyers, drivers, telemarketers, financial analysts, and even those in the medical profession. In one US study, it has been estimated that 47 percent of currently existing jobs are at high risk of potential automation in the coming decades.[3] This would leave more of the middle class unemployed and struggling to adjust, hence furthering the income gap.

Blockchain technology as a new megatrend appears to strongly impact society and global economy over the next decade, which bears the risk of inequality in growth but also carrying the chance to promote equality.

Recommendations

36. Ensure a focus on the negative and positive impact of new technologies and related policies and legislation: Consider anti-discrimination legislation and policies on data protection and the right to information together, creating equal protection by design.

37. Ensure that Artificial Intelligence plays a supportive role to humans, by empowering them to perform better in handling complex and critical situations which require judgement and creative thinking that supports equality and non-discrimination.

38. Prevent and address negative consequences, e.g. by feeding machines with 'fair' data to prevent algorithmic bias.

39. Monitor developments in Blockchain technology and regulate to increase equality and prevent discrimination; ensure that the technology creates more transparency while reducing fraud and corruption.

40. Prepare people equally for automation and for new roles with a focus on science and technology, through education and training in these areas and through research on the labour market and workforce needs so that no one is left behind.

Human rights and business

Increasing accountability of corporations and implementation of human rights principles by businesses were considered a key strategy for tackling inequalities. Reference was made to paragraph 67 of the 2030 Agenda that noted private businesses as key drivers of inclusive economic growth, and to the Declaration of the G20 in

[3] Frey/Osborne (2013): The future of employment. https://www.oxfordmartin.ox.ac.uk/downloads/academic/future-of-employment.pdf [accessed 22.06.2018]

2017, which committed to achieving sustainable and inclusive supply chains, by fostering the implementation of labour, social and environmental standards and human rights in line with internationally recognised frameworks, such as the UN Guiding Principles on Business and Human Rights and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. It was noted that states had committed to working towards establishing adequate policy frameworks such as National Action Plans on business and human rights and to underline the responsibility of businesses to exercise due diligence. states also committed to taking immediate and effective measures to eliminate child labour by 2025, forced labour, human trafficking and all forms of modern slavery.

Recommendations

41. Ensure adoption and implementation of National Action Plans on business and human rights along with effective grievance and reparation mechanisms.

42. Support and speed up the elaboration of a binding legal treaty on business and human rights.

43. Include human rights clauses in all investment treaties, with focus on extraterritorial human rights obligations.

44. Promote the application of the principle of free, prior and informed consent, especially where investment and development concerns affected indigenous people.

National Human Rights Institutions (NHRIs)

The crucial role of National Human Rights Institutions, notably independent NHRIs, was highlighted, such as their function to promote equality and prevent and protect from discrimination. The Working Group noted their indispensable protection functions; their support to people exposed to discrimination and intolerance and their roles to pursue litigation on their behalf; also the function, where applicable, to take decisions on complaints, including on issues relating to the violation of equality principles and the right to non-discrimination. NHRIs are key institutions in charge of monitoring and key partners holding governments to account. They link national, regional and international actors. They also provide platforms for people to engage on human rights through their action on promotion and through human rights education.

Recommendations

45. Support independent National Human Rights Institutions that are adequately resourced and have a comprehensive mandate in compliance with the Paris Principles.

46. Strengthen the role of NHRIs in addressing discrimination and inequalities, reviewing the scope of progressive realisation of economic, social and cultural rights, and developing SDG indicators and monitoring compliance.

Role of cities and municipalities

Cities and municipalities were considered new and increasingly important human rights actors. In 30 years, 70% of the world's population will live in cities.[4] Depending on their actions, urbanisation can be a positive or negative force for equality. The functions of municipalities/cities were described as serving as a democratic institution, rule maker, employer, service provider and contractor. Good practice is a toolkit for equality at local level, developed by the UNESCO-founded

[4] United Nations (2016), New Urban Agenda, A/RES/71/256, adopted at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in Quito, Ecuador, on 20 October 2016, p. 3.

International Coalition of Inclusive and Sustainable Cities (ICCAR) in cooperation with the Centre for the Promotion of Human Rights at Local and Regional Level in Graz. This tool supports the implementation of the 2016 UN New Urban Agenda (NUA) in practice. The NUA has set the scene for sustainable urban development. 39 policies in 35 cities in 13 countries had been assessed in preparation of the toolkit, and among the most important findings are that policies are applied to promote equal opportunities rather than fighting discrimination. It was found that high-level leadership, commitment, ownership and engagement was key, with clear objectives, the participation of stakeholders and programmes lasting for several years. Diversity and integration policies such as action plans, welcome services, counselling, and anti-discrimination offices were successful if they were matched with relevant budgets for at least five years (short-term, pilot projects did not have such impact). Most successful, but rarely employed, are policies of cities as contractors and employers against discrimination over the longer term. Clear responsibilities and concrete objectives in policies were leading to concrete results. It was noted that cities/municipalities have both significant opportunities and responsibilities to ensure equal opportunities for all where people can live in security, peace and dignity.

Recommendations:

47. In efforts to expand from global to new local constituencies for human rights, recognise the important roles and responsibilities of local authorities and cities as service providers for leaving no one behind and ensuring a human rights-based approach.

48. Use an urban focus (on SDG 11 'Make cities and human settlements inclusive, safe, resilient and sustainable' and the New Urban Agenda) in policies to strengthen equality at the local level, leaving no one behind through promotion of substantive equality, equal treatment, equal opportunities, inclusion and equity.

49. Use employment policies to ensure non-discrimination and promotion of equality by employers in their city workforce and use public procurement policies to ensure non-discrimination and to prevent corruption in the private sector.

50. Plan and implement municipal equality/non-discrimination policies, operationalisation of the "leave no one behind" principle in anti-discrimination policies, with full participation of concerned people.

51. Guarantee security of tenure and recognise the social functions of housing, land and property in laws and policies (e.g. city of Vienna as good example/tradition of social housing policies).

52. Monitor local policies for impact on the persons most affected, not just for management compliance.

Monitoring and data

It was suggested that the development of improved systems for data for evidence-based policy making and programming was key to tackling inequalities. The reach of data disaggregation was to be extended, as people excluded are migrants, people in remote rural areas, nomads etc. National statistical systems/offices are natural partners for monitoring and the related data collection, analysis and use, in particular where joined up with National Human Rights Institutions.

Recommendations:

53. Focus on implementation and monitoring of inequality and non-discrimination, with robust data generation, disaggregation, analysis and dissemination supporting evidence-based policies and programming.

54. Link statistical offices and NHRIs in programming and SDG implementation monitoring, with a focus on those being most left behind and discriminated against.

Communications and advocacy

How to make equality issues relevant to everyone in society was considered a key issue. It was suggested that it is important to seek ways of reaching out to those who feel left behind or excluded by a political culture that they see as privileging marginal groups, as well as using human rights education to empower people who might feel unable to claim their rights as a result of structural or cultural barriers. It was concluded that, in parallel, emotional and rational advocacy and communication should be employed, using hard data and facts for evidence-based communication, but also real life, human stories to reach those who respond better to personal experience. Human rights education programmes could use examples from history to allow people to develop their own critical perspectives on both the historical roots of present-day inequality and the past struggles for equality that resulted in the human rights norms of today.

Recommendations

55. Engage people who might feel alienated from human rights by using perspectives from history to show how struggles for equality emerged in response to injustice, inequality, and violence in the past.

56. Use an interdisciplinary approach in communications to show that human rights are not abstract, but very real and meaningful to people, and the result of historical struggles in particular local contexts.

IV. Taking the new human rights and equality agenda to the economic and development decision-making sphere

In taking the new human rights and equality agenda to the economic and development decision-making sphere of accountability, considered by some so far a largely "human rights free zone", the following could be considered.

It was concluded that governments and international financial institutions should take steps to improve the regulation and monitoring of national fiscal policies and global financial markets and institutions, to address the role financial deregulation and liberalisation has played in increasing income and wealth disparities, and in contributing to financial crises with severe implications for human rights.

Recommendations

57. Adopt policies that seek to place austerity measures within a human rights framework, halting fiscal austerity action that contravenes human rights to protect from retrogression. Ensure that fiscal policies guarantee basic social protection floors, in particular basic education and health.

58. The European Union and other regional groupings should reconsider and amend neoliberal policies.

59. The International Financial Institutions (IFIs) should ensure a human rights-based approach to poverty reduction strategies and a greater focus on longer-term processes of empowerment of stakeholders.

60. IFIs should strengthen social and economic impact assessments that significantly increase human rights integration and make them mandatory; they should ensure transparency and complaint mechanisms for stakeholders. Review trade laws and make them subsidiary to human rights law.

61. Reinforce and support the application of the concept of maximum available resources (to be used by states for the realisation of economic, social and cultural rights) and link policies to it, and support their financing through progressive and equitable tax policies aimed at generating the maximum available resources to reduce income and wealth disparities.

62. Ensure spending policies enable the universal and progressive realisation of all human rights without discrimination or retrogression.

63. Address the global economic order through socially redistributive tax systems, tax abuse being incompatible with the International Covenant on Economic, Social and Cultural Rights (ICESCR), e.g. policies capable of transforming wealth distribution such as land reform, improved access to further education and training, and policies aimed at addressing employment vulnerabilities (by reducing potential exploitation, and strengthening labour protection).

64. Eradicate illicit financial transfers as a source of inequalities by taking individual and collective action to eliminate tax abuse that increases inequalities within and between countries.

Special recommendations to the UN

65. Ensure One UN action with human rights as a central part of its mandate, in political affairs, development, peace and security, conflict prevention, humanitarian affairs and other. Fully apply UN Development Group (UNDG), Inter-Agency Standing Committee (IASC) and other guidance to this effect, including the human rights-based approach to development.

66. Implement the agreed Shared UN System Framework for Action on inequality developed by the Chief Executives Board for Coordination (CEB) and its specific areas of action in policies and programming, with implementation and operationalisation having full support from Member States.

67. Continue playing a leadership role in ensuring application of practical measures for equality and non-discrimination; e.g. newly attained gender equality among resident coordinators is a good example.

Working Group 2
Chairperson: Manfred Nowak
Rapporteur: Heike Alefsen
Team: Anna-Maria Steiner, Nina Radovic
May 2018

Annex

Vienna + 25: Building Trust — Making Human Rights a Reality for All

International Expert Conference on the occasion of the 25th anniversary of the World Conference on Human Rights

organized by the Austrian Federal Ministry for Europe, Integration and Foreign Affairs in cooperation with the Office of the UN High Commissioner for Human Rights (OHCHR) and the Ludwig Boltzmann Institute of Human Rights (BIM) at the invitation of the City of Vienna

Vienna City Hall, Austria
22 and 23 May 2018

Programme

Tuesday, 22 May 2018

12:00 Registration and welcome lunch

13:30 High-level opening session

Opening Addresses:

- **Michael Häupl**, Mayor and Governor of Vienna
- **Karin Kneissl**, Federal Minister for Europe, Integration and Foreign Affairs, Republic of Austria
- **Zeid Ra'ad Al Hussein**, UN High Commissioner for Human Rights

Opening Panel Discussion: Emerging human rights challenges — Perspectives from the ground

- **Michael O'Flaherty**, Director of the EU Agency for Fundamental Rights (Chair)
- **Nadia Murad**, UNODC Goodwill Ambassador for the Dignity of Survivors of Human Trafficking, Iraq
- **Max Schrems**, Data protection activist and founder of NOYB — European Center for Digital Rights, Austria
- **Hauwa Ibrahim**, Human rights lawyer, Nigeria
- **Susana Chiarotti**, Human rights lawyer and women's rights activist, Argentina

15:00 Parallel Working Groups

1. Human Rights and Security
2. Promotion of equality in our societies

16:00 Coffee Break

16:30 Parallel Working Groups (continued)

19:00 Reception for Panelists and Working Group participants at the Austrian Federal Ministry for Europe, Integration and Foreign Affairs

Wednesday, 23 May 2018

09:00 Parallel Working Groups (continued)

11:00 Coffee Break

11:30 Concluding Session

Presentation of Recommendations from the Working Groups

Concluding Panel Discussion: The way forward — Views of key institutional stakeholders

- **Christian Strohal**, Special Representative for the Vienna World Conference on Human Rights 1993 (Chair)
- **Fabrizio Hochschild**, UN Assistant Secretary-General for Strategic Coordination
- **Hilal Elver**, UN Special Rapporteur on the Right to Food
- **Bandana Rana**, Member of the UN Committee on the Elimination of Discrimination against Women CEDAW
- **Diego García-Sayán**, UN Special Rapporteur on the Independence of Judges and Lawyers
- **Gauri Van Gulik**, Amnesty International Regional Director for Europe

Concluding Remarks:

- **Karin Kneissl**, Federal Minister for Europe, Integration and Foreign Affairs, Republic of Austria

13:00 End of the Conference

* * *

13 30 *Policy Lab on Human Rights Cities organized by the European Union Agency for Fundamental Rights in cooperation with the City of Vienna*